

FEDERAL ENVIRONMENTAL PESTICIDE CONTROL ACT OF 1971

SEPTEMBER 25, 1971.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. POAGE, from the Committee on Agriculture,
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 10729]

The Committee on Agriculture, to whom was referred the bill (H.R. 10729) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

BRIEF SUMMARY

H.R. 10729 contains four sections.

The *first section of the bill* cites this legislation as the "Federal Environmental Pesticide Control Act of 1971."

Section 2 of the bill contains a series of amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) which completely rewrite that statute. The thrust of these amendments is to change FIFRA from a labeling law into a comprehensive regulatory statute that will henceforth more carefully control the manufacture, distribution, and use of pesticides.

In so changing old FIFRA the new statute would contain the following main provisions:

1. It establishes a coordinated Federal-State administrative system to carry out the new program. The States are given prime responsibility for the certification and supervision of pesticide applicators. The Federal Government sets the program standards the States must meet. State authority to change Federal labeling and packaging is

completely preempted, and State authority to further regulate "general use" pesticides is partially preempted.

2. The administrative procedures for pesticide registration, cancellation, or suspension are rewritten. Under the new program the National Academy of Sciences can be called upon by EPA to render opinions on relevant scientific issues that arise in the hearing process.

3. Pesticides will be classed into two categories—"General Use" and the more dangerous "Restricted Use." The latter can be applied by or under the direct supervision of licensed pesticide applicators or under other restrictions set by EPA.

4. There will be two types of pesticide applicators—Commercial and Private. The bulk of the private pesticide applicators are expected to be farmers. All applicators will be licensed and will be required to exhibit a satisfactory knowledge of and ability to safely apply pesticides.

5. The Administrator of EPA is given authority to issue experimental permits for the safe testing of new compounds.

6. EPA is given enforcement powers to (a) issue warnings, (b) bring court injunctions, (c) seize pesticides or devices, (d) impose civil penalties, and (e) bring criminal charges when such action is warranted.

7. The Administrator is given new powers to examine books and records, inspect the premises, and take samples of pesticides in the possession of persons covered by the Act.

8. Trade secrets and certain scientific data submitted in support of registrations are either kept confidential or not made available to support registration applications by other persons.

9. Indemnities must be paid by EPA under certain circumstances and the option to turn over certain condemned pesticides to EPA is provided to pesticide owners.

10. Judicial review of administrative actions guaranteed.

11. New authority concerning the importation or exportation of pesticides and devices is provided. (The bill does not contain any restrictions on the importation of commodities from foreign nations having pesticide programs different than those in the United States.)

12. The President is given limited authority to exempt by Executive Order Federal agencies from all or any of the provisions of the Act.

13. EPA is given authority to do expanded research and monitoring in order to find new and better methods and materials for controlling pests.

14. The bill creates the mechanics for soliciting and evaluating public comments about the new program.

15. FIFRA is continued as a permanent law, but the authorization for appropriations will expire on June 30, 1974.

16. General authority is granted to EPA to write regulations to carry out the Act and recognize the use of specialty chemicals.

Section 3 of the bill contains conforming amendments to three other laws changing the term "economic poison" to "pesticide."

Section 4 of the bill sets forth various effective dates in order to put the new program into operation as quickly and as effectively as possible.

THE NEED FOR LEGISLATION

The Committee is of course aware of criticism in certain circles to the effect that agriculture is some sort of a major villain on the environmental pollution scene. There is a clear implication by some that if farmers would only return to the ways of the "good old days" many environmental problems would no longer exist.

The Committee realizes that the agricultural community must shoulder its share of the responsibility for a better environment, but on the other hand it should be recognized that many farmers and ranchers have long been in the forefront of the battle for a better earth.

Common sense dictates that a farmer would be careful in handling materials which, if improperly used, could injure himself, his family, and the premises upon which he and his family live and work. Beyond that obvious observation, though, the record of conservation by farm people, both through and outside government, should not only be recognized but applauded.

Some people might better devote increased efforts toward the abatement of Federal, State, municipal and industrial waste rather than to idly point a finger at the farmer.

In regard to this point, the recent remarks of the Nobel Prize winner, Dr. Norman Borlaug, seem appropriate:¹

"Today, everybody talks about the environment. This is also nothing but one more example of a different aspect of this population problem.

"I am fearful that there are some purists—and I started out in Forestry and worked in one way or another in ecology from the whole thing of forest protection and watershed protection and wildlife, and I feel I know something about this and yet I'm horrified by what I read and listen to on the radio and television about some of the theories of the purists—who are suddenly going to shut off the use of chemical products that we need to continue the improvement of our agricultural production, and I say it broadly—fertilizers and pesticides. Sometimes we have had accidents with pesticides, but think of the good they have done. Without them where would our agricultural production be today?

"We need common sense mixed with these things. But common sense seems to, all too often, go out the window.

"You see in this world of tomorrow, those purists—environmental purists—who would deny the use of chemical fertilizers because we are contaminating our waters—and God knows we have done this to our lakes, rivers, and streams—and I'm sure we can do a lot to correct it.

"But it all doesn't come from chemical fertilizers. What about the sewage and industrial wastes? What about the pollution of the environment—the smog, industrial and automotive?

"We have to and must do something about it because of the way this is all evolving, and I'm sure we can, but I refuse to be stampeded into saying we will discontinue the use of chemical fertilizers in the developing world because it is to commit those

¹ Remarks at the 9th Federal Reserve District Farm Forum in Minneapolis, Minnesota, on March 3, 1971.

hungry people to starvation. Is this the way to build a better world?"

Even though the Committee recognizes that farmers and ranchers have not been pollution villains, this legislation has been developed in an effort to improve the quality of living for all Americans while recognizing the basic needs of a modern and efficient agricultural industry in this Nation.

The Committee also recognizes that during recent years there has been an increasing public concern over the uses and application of pesticides. This rising concern has reflected expanded interest in environmental protection by many citizens. This bill is in part a result of the growing awareness of possible undesirable effects of pesticides and a realization of the necessity of considering these disadvantages along with the beneficial effects realized through protection of public health and enhancement of agricultural productivity.

The basic law presently regulating pesticides—or “economic poisons” as they are presently known—is the Federal Insecticide, Fungicide, and Rodenticide Act of 1947, as amended, supplemented by sections of the Food, Drug, and Cosmetic Act concerning possible toxic residues left on foodstuffs. The Committee feels that this basic law regulating pesticides in the United States needs to be thoroughly overhauled in order to better serve the Nation in the light of these changing situations.

The machinery for managing these chemical compounds which are being introduced daily into the environment needs updating to properly balance all of the many factors interrelated with our current management of pesticides.

The Committee acknowledges that the wise use of pesticides has saved millions of lives by controlling insect vectors of diseases such as malaria and typhus, and the Nation as a whole has benefited tremendously from the efficiency of insect and weed control made possible by agricultural applications of pesticides of various sorts.

But on the other hand, there is evidence of diminished effectiveness of control and increased undesirable effects on non-target and beneficial organisms resulting from indiscriminate use and abuse of invaluable pesticides.

The Committee found the greatest need for revision of existing law to be in the areas of strengthening regulatory controls on the uses and users of pesticides, speeding up procedures for barring pesticides found to be undesirable; streamlining procedures for making valuable new control measures, procedures, and materials broadly available; strengthening enforcement procedures to protect against misuse of these biologically effective materials; and creating an administrative and legal framework under which continued research can produce more knowledge about better ways to use existing pesticides as well as developing alternative materials and methods of pest control.

The Committee has worked on each of these problems. H.R. 10729 imposes new controls and sanctions on both the uses and the users of pesticides. Old FIFRA is changed from a labeling to a regulatory program. New tools for restricting the introduction and dissemination of pesticides into the environment are given to the EPA. Continued and expanded research, both private and public, is encouraged.

A SEARCH FOR BALANCE

As the Committee labored through the months of hearings and discussions, one central legislative philosophy developed . . . the theme of a "search for balance."

Expert witness articulated divergent opinions. Individual members of the Committee expressed and debated diverse views. The Committee solicited advice from environmentalists, from farm groups, from State and Federal officials, from the chemical industry, and from the public. These views too were panoramic.

Sifting through the spectrum of opinion, the search for a reasonable balance led the Committee to the legislative concepts of H.R. 10729 which recognize both the benefit and risk of these materials in society; to policies which call for the continued but more carefully controlled use of pesticides; to programs which will mesh, not clash, with the States; and to a philosophy which calls for those of divergent viewpoints to each try to see the problem of environmental pesticide control through the eyes of those with whom he may disagree.

In summary H.R. 10729 is not a "farmer's bill." It's not a "manufacturer's bill." Neither is it an "environmentalist's bill." It is rather a mixture of each, a composite of all, and the manifestation of a sincere effort by the Committee on Agriculture to meet the need for reasoned progress in this important area of public concern.

HISTORICAL BACKGROUND

The use of chemicals in agriculture began with the trend toward intensive farming in the mid-19th century. Cultivation of specialized crops created imbalances in nature which provided insects and other pests ideal conditions in which to multiply.

As an example, the Colorado potato beetle in 1850 lived on local plants and maintained a balanced population in its natural environment. When the early settlers planted potatoes, the beetles were furnished a vast new supply of food. They multiplied. They became a pest to the new settlers and spread eastward to other potato fields as a result of their own population pressure. Nothing was effective against this new pest until the arsenic compound, Paris green was applied.

By the latter half of the 19th century, United States agriculture was well on the way toward becoming a commercial production industry. Progressive, scientific farming was promoted by the founding of the land-grant colleges, the agricultural experiment stations, and the creation of an extension-education system. These institutions, together with the United States Department of Agriculture, made up an extremely effective organization of applied research, informational and demonstration programs, and consulting services for farmers.

As a result of these developments in which the increasing use of chemical pesticides played an important role, most of U.S. food supplies and substantial quantities for export are now produced by fewer than 5 percent of the population.

SCOPE OF PRESENT PROGRAM

Under present law more than 60,000 products made from one or more of 900 chemical compounds are currently registered. Of these, farmers use pesticides to fight harmful weeds, insects, plant diseases, and other pests attacking their livestock and food crops; plant regulators to produce seedless fruits and vegetables and to prevent premature dropping of fruit; and plant defoliants and desiccants to cause leaves to drop or plants to mature uniformly so that mechanical harvesting can be used more efficiently.

Although farmers use by far the largest *volume* of the pesticides produced in this country, *approximately half* of the pesticide products registered by EPA are designed for nonfarm uses around or in homes, apartment buildings, and industrial plants.

Industrial uses of chemical products registered as pesticides are quite varied. For example, manufacturers use chemical pesticides against fungi in literally thousands of products ranging from asphalt, paint, and plastics to jet fuel. Other pesticides are used by industry to make such products longer lasting and more attractive to consumers.

All sterilizing, disinfecting, sanitizing, germicidal, and bacteria killing chemicals—except those sold exclusively for use on or in the living body of man or other animals—are classified as “pesticides” and must be registered. These include products to sterilize and disinfect surgical and dental instruments, barber shop and beauty parlor instruments and equipment, dairy equipment, and such restaurant equipment as dishes and glasses.

Homeowners and apartment dwellers alike use pesticides practically every day. The housewife fights such insects as roaches and ants with pesticides; she combats mildew and other fungi in clothing with fungicides; and she applies detergent-sanitizers in her laundry and antibacterial sprays in her bathrooms and kitchens to keep them sanitary and clean smelling.

Homeowners regularly use insecticides on their lawns, rose bushes, and other ornamentals to protect them against insects. They also apply fungicides on lawns to control grass diseases and herbicides on lawns, driveways, and other areas to control weeds. All of these types of chemicals are registered under present law and will be strictly regulated under the provisions of H.R. 10729.

PUBLIC HEALTH BENEFITS

In addition to making an invaluable contribution to efficient food production, pesticides have saved millions of lives as a result of their widespread use to control or eradicate pest carried diseases such as malaria, typhus, sleeping sickness and yellow fever. A widely recognized scientist believes that the much maligned pesticide DDT has saved more lives than all the anti-biotics combined.¹

CONSUMER BENEFIT

The great forward strides in production efficiency made possible by the use of chemical pesticides in combination with other improved

¹ See Page 469, Printed Hearings Serial 92-A, Remarks of Prof. Robert White-Stevens, Bureau of Conservation and Environmental Science, Rutgers University, the State University of New Jersey, New Brunswick, New Jersey, at the 52nd Annual Meeting of the American Farm Bureau Federation, in Houston, Texas, December 7, 1970.

agricultural practices makes it possible for consumers to obtain their domestically produced foods with a smaller and smaller share of their spendable income.

It is commonly reported that consumers, in 1971, are spending 16.5 percent of their disposable income for food. For their production efforts, farmers receive less than a third of these retail-food expenditures. About 5 percent of consumers' disposable income goes to farmers, perhaps 2 percent goes for imported food and approximately 9.5 percent is required to pay the processing and marketing charges.

There are few, if any, countries in the world where such a small percentage of consumers' expenditures is required to purchase the farm supplied foods. There also are few countries which use as much chemical pesticides as American farmers.

CURRENT PRODUCTION AND SALES OF PESTICIDES AND RELATED PRODUCTS

For the purposes of the following Table 1, the term "pesticides and related products" includes fungicides, herbicides, insecticides, rodenticides, and related products such as plant hormones, seed disinfectants, soil conditioners, soil fumigants and synergists. The following data also reflects 100-percent active material and excludes such materials as diluents, emulsifiers, and wetting agents.

U.S. production of pesticides and related products in 1970 amounted to 1,034 million pounds—6.4 percent less than the 1,104 million pounds reported for 1969. Sales in 1970 were 881 million pounds, valued at \$870 million, compared with 929 million pounds, valued at \$851 million, in 1969.

The output of cyclic pesticides and related products amounted to 727 million pounds in 1970—about 11.3 percent less than the 819 million pounds produced in 1969. Sales in 1970 were 602 million pounds, valued at \$702 million, compared with 666 million pounds, valued at \$697 million, in 1969. The output of DDT amounted to 59 million pounds in 1970—the lowest since 1949. Production of acyclic pesticides and related products, increased in 1970 amounting to 307 million pounds, compared with the 285 million pounds reported for 1969. Sales in 1970 were 279 million pounds an increase of about 6.3 percent as compared with 263 million pounds in 1969; the value of sales increased to \$169 million in 1970, compared with \$154 million in 1969—a gain of 9.6 percent.

SYNTHETIC ORGANIC CHEMICALS, 1970

TABLE 1.—PESTICIDES AND RELATED PRODUCTS: U.S. PRODUCTION AND SALES, 1970

[Listed below are all pesticides and related products for which any reported data on production or sales may be published (Leaders are used where the reported data are accepted in confidence and may not be published or where no data were reported.) Table 2 lists all pesticides and related products for which data on production or sales were reported and identifies the manufacturers of each]

Product	Production (1,000 pounds)	Sales		
		Quantity (1,000 pounds)	Value (1,000 dollars)	Unit value ¹ (per pound)
Grand total.....	1,034,075	880,914	870,314	\$0.99
Benzenoid.....	579,414	497,365	513,087	1.03
Nonbenzenoid.....	454,661	383,549	357,227	.93
PESTICIDES AND RELATED PRODUCTS, CYCLIC				
Total.....	727,133	601,755	701,558	1.17
Fungicides, total.....	95,762	83,465	39,023	.47
3,5-Dimethyl-1,3,5-2H-tetrahydrothiadiazine-2-thione (DMTT).....	1,218	1,117	631	.56
Mercury fungicides, total.....	1,571	1,625	5,902	3.63
Phenylmercuric acetate (PMA).....	457	301	2,003	6.65
Other mercury fungicides.....	1,114	1,324	3,899	2.94
Naphthenic acid, copper salt.....	1,730	1,795	529	.29
Pentachlorophenol (PCP).....	47,170	45,832	6,371	.14
8-Quinololinol (8-Hydroxyquinoline), copper salt.....	71	68	120	1.76
All other cyclic fungicides ²	44,002	33,028	25,470	.77
Herbicides and plant hormones, total.....	330,326	246,534	449,026	1.82
1,2-Dihydropyridazine-3,6-dione (Maleic hydrazide) (MH).....	3,271	3,096	5,247	1.69
Phenoxyacetic acid derivatives:				
2,4-Dichlorophenoxyacetic acid (2,4-D).....	43,675	15,783	4,136	.26
2,4-Dichlorophenoxyacetic acid esters and salts, total.....		43,917	13,140	.30
2,4-Dichlorophenoxyacetic acid, n-butyl ester.....	878	1,454	479	.33
2,4-Dichlorophenoxyacetic acid, sec-butyl ester.....	6,740	3,931	1,023	.26
2,4-Dichlorophenoxyacetic acid, dimethylamine salt.....	19,499	19,480	5,350	.27
2,4-Dichlorophenoxyacetic acid, iso-octyl ester.....	9,989	7,387	2,474	.33
2,4-Dichlorophenoxyacetic acid, isopropyl ester.....	1,001	1,078	324	.30
All other (2,4-D) esters and salts.....		10,587	3,490	.33
2,4,5-Trichlorophenoxyacetic acid, esters, and salts, total.....	12,335	7,214	5,347	.74
2,4,5-Trichlorophenoxyacetic acid, iso-octyl ester.....	2,142			
All other (2,4,5-T) esters and salts.....	10,193	7,214	5,347	.74
2-(2,4,5-Trichlorophenoxy) propionic acid (Silvex), and esters.....	2,016	1,407	1,474	1.05
All other cyclic herbicides and plant hormones ³	231,021	175,117	419,682	2.40
Insecticides and rodenticides, total.....	301,045	271,756	213,509	.79
Aldrin-toxaphene group.....	88,641	84,225	43,159	.51
α Bis (p-chlorophenyl)- β,β,β -trichloroethane (DDT).....	59,316	34,019	5,351	.16
Organophosphorus insecticides, total.....	77,236	75,055	78,204	1.04
O,O-Diethyl O-p-nitrophenyl phosphorothioate (Parathion).....	15,259	15,504	7,672	.49
O,O-Dimethyl O-p-nitrophenyl phosphorothioate (Methyl parathion).....	41,353	39,869	19,173	.48
All other organophosphorus insecticides ⁴	20,624	19,682	51,359	2.61
All other insecticides and rodenticides ⁵	75,852	78,457	86,795	1.11
PESTICIDES AND RELATED PRODUCTS, ACYCLIC				
Total.....	306,942	279,159	168,756	.60
Fungicides, total.....	44,397	45,394	26,155	.58
Dithiocarbamic acid salts ⁷	39,381	40,013	18,998	.47
All other acyclic fungicides ⁸	5,016	5,381	7,157	1.33
Herbicides and plant hormones, total.....	73,458	61,578	48,928	.79
Methanearsonic acid salts ⁹	30,454	24,521	8,028	.33
All other acyclic herbicides ¹⁰	43,004	37,057	40,900	1.10
Insecticides, rodenticides, and soil conditioners and fumigants, total.....	189,087	172,187	93,673	.54

See footnotes at end of table, p. 9.

SYNTHETIC ORGANIC CHEMICALS, 1970—Continued

TABLE 1.—PESTICIDES AND RELATED PRODUCTS: U.S. PRODUCTION AND SALES, 1970—Continued

[Listed below are all pesticides and related products for which any reported data on production or sales may be published. (Leaders are used where the reported data are accepted in confidence and may not be published or where no data were reported.) Table 2 lists all pesticides and related products for which data on production or sales were reported and identifies the manufacturers of each]

Product	Production (1,000 pounds)	Sales		
		Quantity (1,000 pounds)	Value (1,000 dollars)	Unit value ¹ (per pound)
PESTICIDES AND RELATED PRODUCTS, ACYCLIC—Continued				
Methyl bromide (Bromoethane).....	21,047	21,790	8,764	\$0.40
Organophosphorus insecticides ¹¹	55,260			
All other acyclic insecticides (including sales of acyclic organophosphorus insecticides), rodenticides, and soil conditioners and fumigants ^{12 13}	112,780	150,397	84,909	.56

¹ Calculated from rounded figures.

² Includes benomyl, captafol, captan, dinocap, folpet, pentachloronitrobenzene, sodium pentachlorophenate, tri- and tetra-chlorophenols, (including 2,4,5-trichlorophenol and its salts) and others.

³ Includes acetanilide compounds, amiben esters and salts, farban, benefin, bensulide, other 2,4-D esters and salts (production only), dicamba, dimethylurea compounds, dinitrophenol compounds, endothal, isopropyl phenylcarbamates (IPC and CIPC), MCPA, mollinate, NPA, picloram, propanil, triazines, trifluralin, uracils, and others.

⁴ Includes aldrin, chlordan, dieldrin, endrin, heptachlor, and toxaphene.

⁵ Includes azinphosmethyl, carbophenothion, coumaphos, diazinon, dioxathion, fensulfothion, ronnel, and other phosphorothioates and phosphorodithioates, and others.

⁶ Includes carbofuran, chlorobenzilate, dicofol, endosulfan, methoxychlor, and other chlorinated insecticides, carbaryl, insect attractants, DEET and other insect repellents, lindane, small amounts of rodenticides, piperonyl butoxide and other synergists, and others.

⁷ Includes ferbam, maneb, metham, nabam, and zineb, plus the remaining dithiocarbamates which are used chiefly as pesticides.

⁸ Includes dodine, mercury compounds, PETD, and others.

⁹ Includes the mono- and di-sodium salts, and the dodecyl- and octyl-ammonium salts of methanearsonic acid.

¹⁰ Includes cacodylic acid, CDAA, dalapon, thiocarbamate, thiolcarbamate, and organophosphorus herbicides, sodium TCA, and others.

¹¹ Includes DDVP, dimethoate, disulfoton, ethion, malathion, monocrotophos, naled, phorate, and other organophosphorus insecticides. Sales are included in the data for all other acyclic insecticides.

¹² Includes DBCP, soil conditioners and fumigants, methaldehyde (which is a molluscicide), small quantities of rodenticides, and others.

¹³ Sales of acyclic organophosphorus insecticides are included with "All other acyclic insecticides" in order to establish an all other acyclic insecticide total without disclosing the operations of individual companies.

Source: U.S. Tariff Commission, Preliminary Report on U.S. Production and Sales of Pesticides and Related Products—1970, issued September 1971.

FEDERAL INSPECTION ACT OF 1910

As early as 1910 the distribution and use of chemical pesticides reached a level which required Federal regulation for the protection of users, consumers and the general public. Federal regulation of pesticides began with the enactment of the Federal Insecticide Act of 1910, although State regulation was undertaken in some States at an even earlier date.

The Federal Insecticide Act of 1910 prevented the manufacture, sale or transportation of adulterated or misbranded insecticides and fungicides and authorized regulation of sales of insecticides and fungicides.

As the number and variety of chemical pesticides manufactured and used increased, individual States increased the scope of their regulations. In 1946 the Council of State Governments developed a uniform insecticide, fungicide and rodenticide act for the consideration of and adoption by the individual States. At the same time the Congress began holding hearings on proposed more comprehensive Federal legislation.

FIFRA ENACTED

In June 1947, the Insecticide Act of 1910 was repealed and replaced by the Federal Insecticide, Fungicide and Rodenticide Act. By this time great changes had occurred in the field of chemical pesticides, or economic poisons. New plant materials and synthetic chemicals developed through both private and publicly-financed research had greatly increased the number of pesticides available and widened the scope of their usefulness. DDT and herbicides were becoming increasingly important.

The 1947 Act required:

1. The registration of economic poisons or chemical pesticides prior to their sale or movement in interstate or foreign commerce.
2. The prominent display of poison warnings on labels of highly toxic pesticides.
3. The coloring or discoloring of dangerous white powdered insecticides to prevent their being mistaken for foodstuffs.
4. The inclusion of warning statements on the label to prevent injury to people, animals and plants.
5. The inclusion of instructions for use to provide adequate protection for the public.
6. That information be furnished the administrator of the Act with respect to the delivery, movement, or holding of pesticides.

This Act was designed to work in harmony with the uniform State insecticide, fungicide and rodenticide act which was adopted in many States.

MILLER AMENDMENT

In 1954 pesticide regulations were expanded further by an amendment to the Food and Drug Act authorizing its administrator to set tolerance limits for the residues of pesticides on foods.

This provision, known as the "Miller amendment," requires the pretesting of a chemical pesticide before it can be used on food crops. The manufacturer is required to provide detailed data to demonstrate to the administrator of the Federal Pesticide Act (FIFRA) that the chemical is useful to agriculture and how much residue, if any, will remain in or on a food crop after application.

The manufacturer must also supply scientific data on the toxicity of the chemical to warm-blooded animals. It is from these data and from their own research that the Federal Food and Drug Administration sets a tolerance or maximum amount of residue which may legally remain in or on the food crop when it is marketed.

1959 AMENDMENTS

After 1947 several new types of agricultural chemicals, generally referred to as nematocides, defoliants, desiccants, and plant regulators were developed and acquired widespread commercial use. Nematocides were used to control nematodes, or very small eelworms which attack the roots of plants. Defoliants were found useful to make leaves drop from plants to facilitate mechanical harvesting of the crop. Desiccants also were found useful in drying plant tissues to facilitate harvesting the crop. And, plant regulators were found useful under some conditions in regulating the growth processes of plants.

In 1959 the 1947 Act was again amended to include these products under the general regulatory provisions for economic poisons on chemical pesticides.

INCREASING CONCERN IN THE 1960's

In the early 1960's increasing public concern regarding the longer run public health and ecological effects of some of the chemical pesticides led to the creation of a Presidential Scientific Advisory Committee which made a number of recommendations in its 1963 report.

It concluded among other things that,

1. Monitoring programs to obtain systematic data on pesticide residues should be expanded.
2. Federal research programs concerned with pesticides should be expanded and coordinated.
3. A broad educational program emphasizing the hazards in the use of pesticides should be undertaken.

It also recommended amendments to existing pesticide legislation to:

1. Eliminate "protest" registrations.
2. Require each pesticide to carry a license number identification, and
3. Include fish and wildlife as useful vertebrates and invertebrates under the Federal Pesticide Act.

It was the consensus of that committee that mankind must continue to fight insects and other pests in the most efficient manner possible, and that an integrated program involving chemicals was absolutely necessary.

1964 AMENDMENTS

In 1964, amendments to the Federal Insecticide, Fungicide and Rodenticide Act of 1947 were adopted which, as recommended, eliminated protest registration and authorized each pesticide to carry a license number identification. The 1964 amendments also expedited procedures for suspending the marketing of previously registered pesticides which were found to be unsafe.

At that time, the Departments of Agriculture, Interior and Health, Education, and Welfare entered into an interdepartmental agreement, which among other things established procedures for resolving any differences they might have with respect to the licensing and regulation of new pesticides.

The appropriate use of chemical pesticides and the adequacy of existing regulations has continued to be widely discussed in the public forum. Various committees of both the House and the Senate have held hearings, studied the problem, and issued reports on pesticides and public policy and deficiencies in the administration of the Federal Insecticide, Fungicide and Rodenticide Act.

Two years ago the Department of Health, Education, and Welfare appointed a commission on pesticides and their relationship to environmental health. Over 5,000 references to published and ongoing scientific research were reviewed and evaluated by this Commission. It made a number of recommendations in November, 1969, which were considered by all agencies involved in regulations and research relating to pesticides and their use.

CREATION OF ENVIRONMENTAL PROTECTION AGENCY

A year later, President Nixon proposed a reorganization of the agencies of the Federal Government dealing with pesticides to more effectively deal with the problems in this area. In December, 1970, he transferred the pesticide and pure food regulatory staffs located in the Departments of Agriculture, Interior, and Health, Education, and Welfare to a new Environmental Protection Administration.

PESTICIDE LEGISLATION PROPOSED

In February 1971 the President submitted the legislative recommendation which became the basis for this bill. The Administration proposal was introduced by Mr. Poage, the Committee Chairman, and Mr. Belcher, the senior Minority member, as H.R. 4152 on February 10, 1971.

H.R. 10729 COMPARED TO THE PRESENT ACT

The amendments in H.R. 10729 to the Federal Insecticide, Rodenticide, and Fungicide Act, as amended, which is a registration and labeling law, would extend the regulation of pesticides to their manufacture and use, and Federal regulatory authorities would apply throughout the States, not just to the interstate commerce of pesticides.

Under H.R. 10729 registration of pesticides producing establishments is required, and registration of a pesticide entails designation of a use classification carrying concomitant use control requirements. Two classifications are contemplated, general use and restricted use. The former is regulated by the registration and labeling process as under present FIFRA; the latter is also regulated by requiring that users be certified or licensed, or by applying other restrictions.

When a pesticides establishment is registered, certain production information must be submitted and kept current. No such registration is required under the present FIFRA.

Upon initial registration of a pesticide the producer must during the five-year registration period inform the Administrator of any findings relating to adverse environmental effects at any time.

Research and monitoring are authorized, including a national pesticides monitoring plan and program, and provision is made for permits for the experimental use of unregistered pesticides, results to be reported to the Administrator prior to registration.

The requirements under present FIFRA for submission of data for registration and the keeping of books and records available for inspection are continued.

Enforcement is strengthened through inspection of establishments as well as books and records, both routine and under warrant, and the taking of samples. Under present FIFRA only inspection of books and records was authorized.

The coverage of unlawful acts is extended beyond present FIFRA to cover, for example, misuse of a pesticide and failure to register an establishment.

Civil penalties of \$1,000 for private applicators and \$5,000 for others assessed by the Administrator are provided as well as criminal penalties, which are increased from \$1,000 to \$25,000 for persons other than private applicators.

"Stop sale, use, or removal" orders are available when the Administrator believes a violation of the Act has occurred, or when a suspension or final cancellation order has been issued. Present FIFRA has no such provision, but does authorize seizure, as does H.R. 10729.

Aid to States, for enforcement and applicator certification programs is available. States are authorized to further restrict the sale or use of pesticides, and to assist the Administrator in the intrastate registration of pesticides for local needs. Such authorities are not presently contained in present FIFRA.

The amendments provide other new authorities. The Administrator is authorized to solicit public comments on actions taken under the Act. Indemnities for losses suffered by owners of a pesticide subject to suspension and cancellation are provided. Disposal of such pesticides by the Administrator is required upon request. Subpoena of witnesses to a public hearing is authorized.

Referral to a scientific review committee of issues of scientific fact arising during an administrative action hearing is provided; in present FIFRA such referral could be separate from and in addition to the public hearing.

The term "pesticide" replaces "economic poison," and has the same coverage.

COMMITTEE CONSIDERATION

The Committee held 17 public hearings on H.R. 4152 and similar bills beginning on February 10 and ending on March 25, 1971.

Thereafter the Committee prepared and considered three separate Committee Prints and, after holding 19 closed business meetings, ordered H.R. 10729 reported to the House in the presence of a quorum by a division vote of 13-6 on September 17, 1971.

In its consideration of this legislation, the Committee discussed several matters relating to the construction and intent of certain language in the bill as follows:

1. Committee jurisdiction

In the early discussions of this legislation there was some question raised about the jurisdiction of the Committee on Agriculture to consider legislation of this nature. The Committee feels strongly that Rule XI of the House and prior precedent clearly vests this Committee with legislative jurisdiction over all pesticides. Accordingly, the Committee has reasserted its clear jurisdictional mandate by conducting hearings on H.R. 4152 which proposed to repeal the Federal Insecticide, Fungicide, and Rodenticide Act and by reporting H.R. 10729 which will be cited as the "Federal Environmental Pesticide Control Act of 1971" and which substantially rewrites, but does not repeal, FIFRA.

2. Statement of findings

The Committee did not include in H.R. 10729 the statement of legislative findings as originally proposed in H.R. 4152. The Committee did not take this action in derogation of the basic intent of H.R. 4152, but did so to avoid cluttering the final statute with language which the Committee feels is interpretive of the other provisions of this legislation. It is therefore the Committee's intent that:

The Congress hereby finds that pesticides are valuable to our Nation's agricultural production and to the protection of man and the environment from insects, rodents, weeds, and other forms of life which may be pests; but it is essential to the public health and welfare that they be regulated closely to prevent adverse effects on human life and the environment, including pollution of interstate and navigable waters; that pesticides are used throughout the Nation and the major portion thereof moves in interstate or foreign commerce; that it is essential in the public interest to protect the public health and welfare from adverse effects of pesticide residues on food which is consumed throughout the Nation and which moves in interstate or foreign commerce; and that regulation by the Administrator and co-operation by the States and other jurisdictions as contemplated by this Act are appropriate to prevent and eliminate burdens upon interstate or foreign commerce, to effectively regulate such commerce, and to protect the public health and welfare and the environment.

3. Benefit Risk Concept

In the consideration of this legislation the Committee labored for many days over the term "Substantial Adverse Effects on the Environment." In adopting the definition set forth in section 2(bb), the Committee seeks to articulate the concept that the benefits of using pesticides should be balanced against the risk of using them. The Committee considered, but rejected, language which would have required the consideration of "alternative means of control." In rejecting this language, the Committee felt that the economic and practical realities of alternative means of control would be a natural consideration of the Administrator and therefore it was not necessary to include this specific phrase.

4. Essentiality

In the course of considering this legislation the Committee questioned a criterion that had been adopted by EPA for limiting persistent pesticides. This procedure limited pesticides, shown to be persistent, for "essential uses" only. This "essential use doctrine" was referred to in the Jensen and Mrak studies and eventually was incorporated in a series of communications within the Departments of the Federal Executive Branch and was actually used as a criterion in determining whether or not the pesticide may retain its registration.

The growth of this doctrine assumed a plateau of importance. However, EPA, when testifying during the Committee's hearings, did not raise the criterion of limiting pesticides for essential uses only. In researching the criterion, the Committee found no legislative or regulatory authority for the application of the doctrine.

The Committee felt that continued use of this disputed procedure would place all interested parties involved at a disadvantage. The Agency agreed, and the Committee therefore adopted the language of the last sentence of section 3(c)(5).

5. Scientific review

One main purpose of the language in section 6(d) is to avoid frivolous and non-germane issues from burdening the hearing and review process. While the language gives the hearing examiner discretion, that discretion is tempered by the intent of this language to require all relevant

and material scientific issues to be referred to and resolved by the National Academy of Sciences.

6. *Seaweed and other organic materials*

The Committee noted with interest the testimony regarding seaweed and the extensive research conducted on the Norwegian variety, particularly at Clemson University, South Carolina. It is not the Committee's intent that natural, organic products of a non-toxic and non-poisonous nature normally be required to be registered. It is, however, conceivable that certain claims made in the labeling and advertisement may be such as to technically require registration under the Act. In such cases, the Committee emphasizes the need to apply the rules of common sense. The Committee urges the Administrator to consider the scientific data concerning a product which has been extensively researched (for example, Norwegian *Ascophyllum Nodosum* at Clemson's College of Agriculture and Biological Sciences for some 10 years) as being sufficient to constitute the back-up research which may be required by the Administrator in the registration application.

7. *Removal of "Use by Permit" category*

H. R. 4152, the Administration's legislative proposal, requested authority to designate a pesticide in one of three classifications namely "for general use", "for restricted use", or "for use by permit only". Pesticides designated for "use by permit only" would have required "approval in writing for the amount and type of article for each particular application" of an "approved pest management consultant" licensed by a State. The Committee gave this proposal of a third classification and requirement for pest management consultant very careful consideration. The Committee found this proposal would place on the Administrator and users an unworkable and costly burden far in excess of need or benefits gained by such regulatory machinery.

H. R. 10729 requires the Administrator to designate registered pesticides "for general use" or "for restricted use". The legislation grants no authority for a third classification nor does it grant any authority to the Administrator to establish by regulation or agreement with a State the position or similar function of a licensed or approved pest management consultant.

The bill also makes provisions for certifying pesticide applicators as competent to safely and properly use the pesticides they will apply. The Committee intends that EPA, by regulation, establish fair hearing procedures for the suspension or revocation of licenses as well.

The bill also makes provision for requiring restricted use pesticides to be applied only by such a certified pesticide applicator (or a person under his direct supervision) or subject to such other restrictions as the Administrator may determine as necessary. The flexibility of these provisions will allow the Administrator, in accordance with the guidelines in the Act, to establish restrictions which are suited to the degree of hazard and adverse environmental effects that could be caused by the misuse of the pesticide. For example, in some cases only the signing of a poison or pesticide register would be required while in other cases the purchaser or user might be required to certify that he has read the instructions and will apply it in accordance with such instructions. In other cases general or seasonal licenses, permits, or other similar forms of approval may be required.

Among other advantages, this system may permit certain pesticides to be used during the first years after enactment of the bill when a sufficient number of certified pesticide applicators will not be available.

8. Import restrictions on agricultural commodities

The Committee considered at length a proposal (originally introduced as H.R. 26) to apply pesticide restrictions similar to those applicable to U.S. farmers and ranchers to foreign producers. After thorough consideration of this matter the Committee decided to handle this provision as separate and distinct from this bill.

9. Research

There has existed for years collaborative research between manufacturers of pesticides and public and private research institutions. However, initial experimental formulations have largely originated in the laboratories of the manufacturers. The Committee believes this vital research base to be extremely important in the development of new and better materials to meet the environmental and productive needs of the future. This objective is also sought in this legislation.

10. State authority

In dividing the responsibility between the States and the Federal Government for the management of an effective pesticide program, the Committee has adopted language which is intended to completely preempt State authority in regard to labeling and packaging. With regard to this Federal preemption of labeling and packaging, EPA may, where appropriate, in setting labeling and packaging requirements, give consideration to regional, State, and local needs. The Committee also intends for the Federal law to preempt the States from restricting or licensing any "general use" pesticide. The States would also be precluded from adopting programs which are less stringent than the Federal standards. In the case of "restricted use" pesticides the States are left free to impose whatever restrictions they may wish (other than labeling and packaging). The States could also completely prohibit the use of these "restricted use" pesticides within their jurisdictions.

The Committee rejected a proposal which would have permitted political subdivisions to further regulate pesticides on the grounds that the 50 States and the Federal Government should provide an adequate number of regulatory jurisdictions.

Nor is the language in section 24(c) intended to derogate the language in section 24(a). Thus the Administrator would not have authority to delegate to the States authority to set aside the preemption provisions of section 24(a).

11. Inconsistent with label

It is the intent of this definition that articles designated for general or restricted use may be used by a pesticide applicator at a lower dilution than that specified on the label. While it would obviously be dangerous to permit more concentrated solutions to be used, the Committee recognizes the need to apply the standard of use "inconsistent" with respect to labeling in a common sense manner. Thus, for example, the use of pesticide solutions in lower amounts for aerial spraying, when otherwise determined to be safe, should be permitted.

12. "Produce" and "producer"

It is also the intent of the Committee that the persons who dilute pesticides for further use should not, under ordinary circumstances, be considered "producers" or as "producing" pesticides.

TYPOGRAPHICAL ERRORS IN H.R. 10729

The bill contains several typographical and technical errors which the committee intends to correct when the bill reaches the Floor of the House. The most serious printing errors occur at page 27, line 7 where the wrong line was inserted and should read, "of his intention and of whether he intends to cancel the"; and on page 28, lines 20 through 23 should be deleted.

ADMINISTRATION POSITION

The Administration supports the enactment of H.R. 10729 as indicated in the following letter from the Environmental Protection Agency:

ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., September 24, 1971.

Hon. W. R. POAGE,
Chairman, Committee on Agriculture,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: I am pleased to learn that your Committee has ordered reported H.R. 10729, the "Federal Environmental Pesticide Control Act of 1971." I am well aware of the great amount of time and effort your Committee has devoted to this important legislation.

The bill provides significant new authorities to enable EPA, in cooperation with the States and those concerned with the use of pesticides, to protect the environment and the health of the Nation against the misuse and overuse of pesticides. While the bill does not accomplish these objectives in the exact manner proposed in H.R. 4152, the Administration's bill, it will provide essentially the same protection to the public and the same opportunities for continued beneficial use of pesticides. I believe that all will agree that the sweeping and highly desirable new authorities of the bill will permit a great advance in our efforts to protect health and the environment.

I congratulate you and your Committee on the development of this legislation. I therefore support the enactment of H.R. 10729 and urge its favorable consideration by the House of Representatives. My staff and I look forward to continuing to work with you and your Committee.

Sincerely yours,

WILLIAM D. RUCKELSHAUS,
Administrator.

CURRENT AND FIVE SUBSEQUENT FISCAL YEAR COST ESTIMATE

Pursuant to Clause 7 of Rule XIII of the Rules of the House of Representatives, the Committee estimates the cost to be incurred by

the Federal Government during the current and the five subsequent fiscal years as a result of the enactment of this legislation would be as follows:

The Committee assumes that H.R. 10729 will be enacted into law during the current fiscal year (FY 1972) but that appropriations to carry out the new program will not be made until fiscal year 1973.

The Committee concurs with the following gross cost estimates for fiscal years 1973-77 as submitted by the Environmental Protection Agency:

Gross costs:	Millions
Fiscal year 1973-----	\$15.7
Fiscal year 1974-----	33.3
Fiscal year 1975-----	42.0
Fiscal year 1976-----	43.8
Fiscal year 1977-----	43.3

SECTION-BY-SECTION ANALYSIS

Sections 1, 3, and 4 of H.R. 10729 deal with matters that do not directly amend the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Section 1 of H.R. 10729 sets forth the popular Act citation of this bill as the "Federal Environmental Pesticide Control Act of 1971."

Section 3 of H.R. 10729 amends the Federal Hazardous Substances Act, the Poison Prevention Packaging Act, and the Federal Food, Drug, and Cosmetic Act to change the term "economic poison" to the term "pesticide" in order to reflect the change in FIFRA.

Section 4 of H.R. 10729 deals with effective dates of various provisions.

This section provides that except as otherwise noted hereafter the amendments to the Act are effective upon enactment. If regulations are required prior to effectuation of an amendment they shall be prescribed within 90 days after enactment. Provisions of present law are in effect until superseded as provided above or hereafter, and all amendments are required to be effective within four years of enactment.

The following exceptions to immediate effectiveness of amendments enacted are made:

(1) All new registrations of pesticides shall be in accordance with regulations governing registration and classification promulgated within two years of enactment of this Act.

(2) All registrations existing prior to promulgation of the above regulations shall be re-registered and classified in accordance with those regulations after two years but within four years of enactment of the Act.

(3) Any requirements that a pesticide can be used only by a certified pesticide applicator shall not take effect until four years from enactment.

(4) Certification of applicators shall take place during a four year period from the date of enactment. Standards for certification shall have been prescribed one year from enactment. State plans for certification shall have been submitted to the Administrator within three years from enactment. Within one year of such submission the Administrator must approve the State plan, or disapprove and state reasons.

(5) One year from enactment the Administrator is to have in effect regulations governing the registration of establishments, experimental use permits, and the keeping of books and records.

In addition to the foregoing, the Administrator shall publish in the Federal Register regulations relating to criminal and civil penalty, and no person shall be subject to such a penalty under the amendments of this Act until 60 days after publication of the final regulations.

The present FIFRA shall be treated as continuing in effect as if this Act had not been enacted where a question arises as to a criminal or civil penalty or liability to any third person in respect of any act or omission occurring before the expiration of the periods referred to in this section.

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

Section 2 of H.R. 10729 rewrites FIFRA into the following 27 sections:

Section 1. Short title and table of contents

This section provides that the Act may be cited as the "Federal Insecticide, Fungicide, and Rodenticide Act" and provides a detailed table of contents of the Act.

Section 2. Definitions

Section 2 includes many of the definitions in the present FIFRA, with several important changes.

A "certified pesticide applicator" is one certified by the State or Federal government according to standards prescribed by the Administrator to use restricted use pesticides.

A "private pesticide applicator" is a certified applicator who uses restricted use pesticides only on his own property, or on the property of another without compensation.

A "commercial pesticide applicator" is any certified applicator other than a private applicator.

The definition of "misbranded" is amended to include requirements based on other provisions of the Act. For example, labels must bear an establishment registration number and use classification.

"Protect health and the environment" is defined, and includes the requirement to take into account the public interest. "Substantial Adverse Effects on the Environment" contains the same requirement.

Section 3. Registration of pesticides

Subsection (a) requires that all pesticides in the channels of U.S. trade must be registered with the Administrator. Under present law only those pesticides in interstate commerce must be so registered.

Subsection (b) exempts from registration pesticides which are transferred from one establishment to another operated by the same pesticides producer, and pesticides transferred in accordance with an experimental use permit.

Subsection (c) sets forth registration procedures. Each application for a registration must include the name and address of the applicant; the name of the pesticide; the labeling, claims, and directions for the pesticide; a description of tests made and results if the Administrator requests; the pesticide formula; and a request for classification.

Research data originated and submitted by an applicant for registration are not to be considered by the Administrator without permission of the applicant, in support of any other application for registration.

This subsection requires the Administrator to publish guidelines concerning registration information he will require.

He is also required to make available to the public within 30 days after he registers a pesticide the data called for in the registration statement together with such other scientific information as he deems relevant to his decision except for test data as provided under section 3(c)(1)(D) and for trade secrets as provided under section 10. However, the Administrator is not prohibited from making public the data under section 3(c)(1)(D) but is prohibited as to trade secrets and other information as provided by section 10.

Under the subsection, the Administrator is required to approve or deny registration as expeditiously as possible. He is to publish in the Federal Register notice of applications received for the registration of those pesticides containing a new active ingredient or for which a changed use pattern is proposed. While no specific time limit is placed upon the Administrator with respect to how quickly he must act upon an application for registration he is required to act within a reasonable time and such period of time should not normally exceed three months. Where, however, there are extremely unusual mitigating circumstances, a slightly longer period of time could be necessary. The Administrator is similarly authorized to request additional kinds of information and while in some rare instances such additional kinds of information may be necessary prior to registration, requests for such additional kinds of information are not to be utilized as a device to delay registration.

The subsection provides that the Administrator shall approve a registration if he determines that, when considered with any section 3(d) restrictions, the pesticide warrants the claims made for it, its labeling complies with the Act, and it will not have substantial adverse effects on the environment when properly used. If such determination cannot be made the Administrator shall notify the applicant and state why the above requirements are not met. The applicant has thirty days to make necessary corrections. At the end of this period the Administrator is required to refuse to register the pesticide if the corrections are not made. The applicant then has recourse to the administrative remedies in Section 6.

The burden of proof remains with the applicant (as in present FIFRA) to substantiate the claims for the pesticide by test data and otherwise to support the registration of a pesticide. It is only after the Administrator has reviewed all of the test data and any other information he may require to support a registration and has found that its composition is such as to warrant the proposed claims for it, that the labeling and other material required to be submitted comply with the Act, and that it will perform its intended function without substantial adverse effects on the environment that he must register a pesticide. If the applicant cannot satisfy the Administrator on the above requirements the pesticide will not be registered.

Subsection (d) provides authority for the classification of pesticides and where applicable the imposition of restrictions on their use.

Subparagraph (A) of Paragraph (1) states that a pesticide may be classified for general use, for restricted use, or both. In the case of a

pesticide registered for both general and restricted use the bill requires that directions for each be separate and distinguishable.

Subparagraph (B) specifies that a general use pesticide is one which the Administrator has determined will not cause substantial adverse effects on the environment when applied in accordance with its directions for use and warning or caution statements.

Subparagraph (C) specifies that a restricted use pesticide is one which the Administrator has determined could cause substantial adverse effects on the environment without additional regulatory restrictions.

The subparagraph further provides that when the pesticide presents a hazard to the applicator or other persons, it must be used only by or under the supervision of a certified pesticide applicator or be subject to other regulatory restrictions.

The foregoing classification and restriction provisions are not contained in present law and constitute entry of Federal regulation into a significantly unregulated area. General use pesticides will be regulated as all pesticides under Federal jurisdiction are regulated at present. Registration for specific uses under specified conditions, as well as directions for use, warnings, and cautions constitute the major means to control pesticide use under present law. The provisions of the bill for classifying pesticides for restricted use and in some cases requiring that they be applied by or under the supervision of a certified pesticide applicator or in other cases subject to different regulatory restrictions are the key new authorities of the bill. Such provisions enable the Environmental Protection Agency to impose a variety of restrictions as the nature and uses of the pesticide warrant in order to protect persons and the environment, while U.S. agriculture continues to derive the benefits of pesticides use.

Paragraph (2) requires the Administrator to notify the registrant 30 days before changing the classification of a pesticide, and to publish the proposed changes in the Federal Register. Remedies for such a registrant are contained in Sec. 6.

Subsection (e) permits a registrant to register as a single pesticide products having the same formulation, claims, and identifying label-designation.

Subsection (f) provides for minor changes to registrations, prohibits construing registration as a defense for any offense under the bill, and states the Administrator may consult with other Federal agencies on registration matters.

The term "factual basis", as utilized in sections 3 and 6 of the Act, is intended to require the Administrator to set forth the specific manner in which the pesticide, its labeling, or other material concerned with the pesticide fails to comply with the Act, and to also set forth the scientific basis for his determination. Mere reference to statutory language is not to be construed as a statement of the "factual basis", but rather a statement of conclusions and therefore would not be in compliance with the intent of this provision.

Section 4. Use of restricted use pesticides; certified applicators

This section provides for Federal or State certification of pesticide applicators according to standards prescribed by the Administrator. A State may certify applicators if a plan submitted by the Governor is approved which designates a State agency to administer the plan;

assures legal authority, adequate funds, and qualified personnel to execute the plan; provides for reports to the Administrator; and contains applicator certification standards at least equal to those prescribed by the Administrator. A State must be given due notice and opportunity for hearing if the Administrator rejects a pesticide applicator certification plan.

The provisions for certification of applicators comprise new and important authorities for regulating pesticides use. Many restricted use pesticides would be restricted to use by certified pesticide applicators whose misuse of pesticides could result in withdrawal of certification. In the case of commercial applicators, such action would be extremely serious. In the case of private pesticide applicators such action would remove from them the opportunity to obtain and use restricted use pesticides so regulated.

Further, the educational process entailed by certification provides an opportunity not only to greatly diminish the possibility of injury to persons but also injury to the environment from both misuse and, more importantly, overuse.

Section 5. Experimental Use Permits

The Administrator may issue, under terms and conditions established by him, experimental use permits if an applicant needs such permit in order to accumulate information necessary to register a pesticide. Such permit may be revoked if its terms or conditions are violated or are inadequate to avoid substantial adverse effects on the environment.

Section 6. Administrative review; Suspension

Section 6 provides for the cancellation of a registered pesticide at the end of each five year period unless the registrant requests that the registration be continued. If a pesticide is otherwise cancelled for cause or the classification is changed the registrant may make corrections or file objections and request a public hearing.

In order to prevent an imminent hazard during the time required for cancellation proceedings the registration of a pesticide may be suspended. When an order of suspension is issued, a cancellation order must also be issued and the registrant is entitled to the hearing and review remedies available under a cancellation order. An order of suspension is also subject to immediate limited judicial review solely to determine whether the order was arbitrary, capricious or an abuse of discretion, or whether the order was issued in accordance with legal procedures.

When an applicant requests a public hearing in the course of such hearing any party (including the hearing officer) may refer questions of scientific fact to a Committee of the National Academy of Sciences. Such Committee would be required to report in writing to the hearing officer within sixty days on these questions of scientific fact and the report would be made public and considered as part of the hearing record.

This language in the bill relating to scientific advice would maintain a role for scientific advisory committees of the National Academy of Sciences equivalent to that in the present provisions of FIFRA. The amended language would have the further benefit of allowing the advisory committee to consider questions of scientific fact while the public hearing is in process rather than in a completely separate admin-

istrative review process which causes long delays and division of responsibility for actions under the Act. However, the Committee would meet outside of the public hearing so that the scientists who participate would not be subject to cross-examination and other procedural strictures.

As soon as practicable after completion of the public hearing but not later than 90 days thereafter the Administrator must evaluate the data and reports and issue a final order. If questions of scientific fact have been referred to a Committee, the 90 days would not, of course, begin until the Committee submits its report for the hearing record or otherwise until after the completion of the hearing. Under section 6(d) the Administrator after completion of the administrative review proceedings is required to issue an order appropriate to the proceedings which have occurred. Thus, he may by order (1) revoke his notice of intention issued under section 6(b); (2) grant registration; (3) cancel registration, change the classification, or deny registration; or (4) require a modification of the labeling or packaging of the pesticide.

All final orders of the Administrator would be subject to judicial review pursuant to section 16 of the Act.

Section 7. Registration of establishments

Products subject to the Act must be produced in establishments which are registered with the Administrator. The producer who operates an establishment must inform the Administrator within 30 days after it is registered of the types and amounts of pesticides and devices which he is currently producing, produced during the past year, or which he has sold or distributed during the past year. Such information is required to be kept current and submitted to the Administrator annually. All such information is considered confidential and subject to the provisions of section 10.

Section 8. Books and records

The Administrator may prescribe regulations requiring producers to maintain such records with respect to their operations and the products produced as are necessary for enforcement of the Act. Such records required do not extend to financial data, sales data other than shipment data, pricing data, personnel data, or research data (other than data relating to registered pesticides or to a pesticide for which an application for registration has been filed).

Any officer or employee of the Environmental Protection Agency or of any State or political subdivision duly designated by the Administrator shall at reasonable times have access to and may copy records showing the delivery, movement or holding of pesticides and devices, or related information if the above is not available. Such access does not extend to sales, financing, pricing and similar data.

Section 9. Inspection of Establishments

For purposes of enforcing the Act officers or employees duly designated by the Administrator are authorized to enter any establishments at reasonable times to inspect and obtain samples of any pesticides or devices, packaged, labeled, and released for shipment, and samples of any containers or labeling for such products. Before an inspection appropriate credentials and a written statement as to the reason for the inspection and whether a violation of law is suspected must be presented. If no violation is suspected other sufficient reason

must be given. If samples are obtained, an equal portion of such sample must be left with the establishment and a copy of any analysis which may be made. This section also authorizes officers or employees duly designated by the Administrator to obtain and execute a warrant for inspection and reproduction of certain records and for the seizure of products in violation of the Act.

If the examination of pesticides or devices indicates that they fail to comply with the Act, the Administrator must give notice to the person against whom any criminal proceedings are contemplated and provide an opportunity for him to present his views with regard to the contemplated proceedings. If, thereafter, the Administrator believes the Act has been violated he shall certify the facts to the Attorney General for the institution of criminal proceedings pursuant to section 16 if he believes that such action will be sufficient to effectuate the purposes of the Act. However, this notice and opportunity to present views are not prerequisites to the institution of any proceedings by the Attorney General. Warning notices may be issued in lieu of a prosecution for minor violations if the Administrator believes the public interest will be served.

Section 10. Protection of trade secrets and other information

Section 10 of the Act provides that an applicant for the registration of a pesticide may mark any part of the data submitted which in his opinion are trade secrets or commercial or financial information and submit such material separately from the other material required.

The Administrator would not make public any such information which in his judgment contains or relates to trade secrets or commercial or financial information obtained from a person and privileged or confidential. However, if necessary to carry out provisions of the Act, information relating to formulas of products acquired by authorization of the Act may be revealed to any Federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the Administrator.

Section 11. Standards applicable to pesticide applicators

This section exempts private pesticide applicators from any record-keeping or report filing regulations prescribed by the Administrator under the Act, and provides that the Administrator shall establish separate certification standards for commercial and private applicators.

Section 12. Unlawful acts

This section includes many prohibited acts from present law and is expanded to cover intrastate acts and to prohibit violations of the provisions of the Act. Among the new prohibitions is refusal to permit lawful inspection of an establishment or sampling of a pesticide; advertisement of a restricted use product not containing such classification; making available for use, or using, a restricted use pesticide other than as provided under the Act or inconsistent with its labeling; and violation of a "stop sale, use, or removal" order.

Violation of record-keeping and establishment registration provisions is also prohibited.

The section also provides exemption for certain persons dealing with pesticides.

The purpose of Section 12 (a) (2) (F) is to make it unlawful for any person to make available for or to use a pesticide, classified for

restricted use for some or all purposes, for its restricted uses without complying with the restrictions imposed under this Act. If, however, a pesticide in accordance with Section 3 (d) is also classified for general use for some purposes the restrictions imposed for its restricted uses are not applicable to its general uses under either this Section or Section 3 (d).

Section 13. Stop sale, use, removal, and seizure

Subsection (a) of this section authorizes the Administrator to issue a "stop sale, use, or removal" order to any person possessing a device if he believes that the pesticide or device is or will be sold in violation of the Act or if the registration has been suspended or is subject to a final cancellation order.

Subsection (b) authorizes condemnation and seizure of pesticides if they are adulterated, misbranded, not registered, improperly labeled, not colored or discolored as required, or falsely represented as to claims or directions for use. A misbranded device is liable to similar action, as are pesticides and devices which, when used as directed on the label and as required under the Act, nevertheless cause substantial adverse effects on the environment.

Subsection (c) provides for the disposition of condemned and seized pesticides and devices by distribution, sale, or return to the owner under certain conditions and upon the posting of a bond.

Subsection (d) provides for awarding court costs and other expenses against the claimant of the pesticide or device subject to this section.

Section 14. Penalties

H. R. 10729 contains provisions for civil penalties. Such provisions are not included in the existing FIFRA. Persons violating any provision of the Act would be subject to a civil penalty of not more than \$5,000 for each offense, except that a private pesticide applicator would be subject to only a \$1,000 penalty, and only after receiving a written warning or citation for a prior violation. No civil penalty could be assessed until the person charged has been given a notice and an opportunity for a hearing in the county, parish or city of his residence.

Civil penalty provisions are considered a necessary part of a regulatory program such as pesticides control. While the criminal provisions may be used where circumstances warrant, the flexibility of having civil remedies available provides an appropriate means of enforcement without subjecting a person to criminal sanctions. The alleged violator is always provided an opportunity for a hearing before any civil penalty may be assessed, and any misunderstanding as to what constitutes compliance with the Act can be considered by the Administrator and the penalty dispensed with if warranted.

The reported bill also provides that any person who knowingly violates any provision of the Act shall be guilty of a misdemeanor and on conviction be fined not more than \$25,000 or imprisoned for not more than one year or both, except that a private pesticide applicator could be fined not more than \$1,000 or imprisoned more than 30 days, or both.

Section 15. Indemnities

Subsection (a) provides that if the Administrator notified a registrant that he has suspended the registration of a pesticide because

such action is necessary to prevent an imminent hazard and such registration is cancelled as a result of a final determination that the use of such pesticide will create an imminent hazard, any person owning any such pesticide before the suspension notice and who suffered losses because of suspension and ensuing cancellation would be entitled to an indemnity payment.

Subsection (b) provides that the amount of the indemnity payment would be determined on the basis of the cost of the pesticide owned by such person immediately before the notice of suspension, except that no indemnity payment to any person could exceed the fair market value of the pesticide owned by such person immediately before such notice.

The provisions relating to indemnity payments provide for indemnification for pesticide losses where a registration has been suspended to prevent an imminent hazard and a final cancellation order has subsequently been issued. Therefore such payments should not occur frequently as the provisions do not apply to the numerous routine pesticide registration cancellations. Further, because of the more flexible regulatory program which the bill provides, there should be fewer occasions to suspend registrations under the new legislation.

Section 16. Administrative review; judicial review

Except as otherwise provided by this section, chapter 5 of title 5 of the U.S. Code relating to administrative procedure and chapter 7 of title 5 of the U.S. Code relating to judicial review apply in respect of rules, rule making, orders, adjudication, licensing, sanctions, agency proceedings, and agency actions under the Act.

Section 16 also provides that in the case of actual controversy as to the validity of any order issued by the Administrator following a public hearing, any party at interest may obtain judicial review by filing in the U.S. Court of Appeals for the circuit where such person resides or has a place of business within 60 days a petition that the order be set aside in whole or in part. In its review the court shall consider all evidence of record and shall sustain the order of the Administrator if it is supported by substantial evidence when considered on the record as a whole. The commencement of proceedings under this section does not, unless the court specifically orders to the contrary, operate as a stay of any order. The court is required to expedite the disposition of cases filed under this section.

The district courts of the U.S. are vested with jurisdiction to enforce, and to prevent and restrain violations of the Act.

The Administrator must give notice by publication or otherwise of all judgments entered in actions under the Act.

Section 17. Imports and exports

Subsection (a) exempts from the provisions of the Act an exported pesticide or device which is in accordance with the specifications of the foreign purchaser.

Subsection (b) requires the Administrator to transmit through the State Department to foreign governments and international agencies notice of pesticide registration cancellations.

Subsection (c) provides for the inspection of samples of imported pesticides and devices provided by the Secretary of the Treasury to the Administrator, and for the refusal of admission of a pesticide

or device upon a finding by the Administrator that it is in violation of the Act. Disposition of such products is provided as well as payments of expenses incurred by such finding and refusal of admission.

Subsection (d) requires the Administrator to participate in international efforts to develop improved pesticide research and regulations, and subsection (e) requires the Secretary of the Treasury to prescribe regulations under this section.

Section 18. Exemption of Federal agencies

This section authorizes the President to exempt a Federal agency from the provisions of the Act if emergency conditions so require. In this regard the President is authorized to establish procedures to require EPA to promptly consult with other Federal Agencies in order to facilitate temporary registration of restricted use pesticides for meeting emergency outbreaks of plant or animal diseases. Using this authority the President can enable farmers and ranchers to cope with emergency conditions before they spread to other areas, even though in some instances EPA might not possess the fully detailed information normally required. Such a temporary registration should, however, be granted only if EPA has determined that the proposed emergency use will not endanger man or adversely affect the environment.

Section 19. Disposal and transportation

Section 19 provides that the Administrator of the Environmental Protection Agency shall, after consultation with other interested Federal agencies, establish procedures and regulations for the disposal or storage of packages and containers of pesticides and for disposal or storage of excess amounts of such pesticides. The Administrator would be also required to accept at convenient locations for safe disposal a pesticide the registration of which has been cancelled under section 6(c) if requested by the owner of the pesticide.

Section 6(c) of the Act provides for the suspension of a pesticide when such action is necessary to prevent an imminent hazard during the time required for cancellation proceedings. This section also provides that a cancellation proceeding has to be initiated at the same time a registration is suspended so as to provide the affected party with an opportunity for a hearing. The Administrator would not, of course, be required to accept pesticides for disposal until any hearing and review procedures have been completed and a final order issued. Since this requirement to accept for disposal is keyed to suspensions under section 6(c) and not to all pesticide cancellations, such disposal by the government should not be required frequently.

The Administrator of EPA would also be required under section 19 to advise the Secretary of Transportation with respect to the transportation in light of the Secretary's responsibilities regarding hazardous materials.

Section 20. Research and monitoring

This section authorizes the Administrator to use necessary means to undertake pesticides research, giving priority to biologically integrated alternatives to chemicals for pest control; to establish and implement a national plan for monitoring pesticides, as well as undertake other monitoring activities necessitated by provisions of the Act.

Section 21. Solicitation of public comments

Section 21 provides that in addition to any other authority relating to public hearings and solicitation of views in connection with the suspension or cancellation of a pesticide registration or other action under the Act, the Administrator may solicit views of all interested parties and seek such advice from farmers, farm organizations, and other qualified persons as he deems proper.

Section 22. Delegation and cooperation

This section authorizes the delegation of authorities vested in the Administrator under the Act to his designees, and provides for cooperation by the Administrator with other Federal agencies and with agencies of State and local governments in carrying out the Act.

Section 23. State cooperation, aid, and training

This section authorizes the Administrator to enter into cooperative agreements with States for purposes of enforcement of the Act, including training of personnel and including grants for enforcement programs, and to assist States in establishing applicator certification programs. Further, he may enter into contracts with Federal and State agencies for the purpose of encouraging certified applicator training.

Section 24. Authority of States

This section specifies the authorities retained by the States under the Act. Generally, the intent of the provision is to leave to the States the authority to impose stricter regulation on pesticides use than that required under the Act.

Subsection (a) gives States the authority to regulate the sale or use of a pesticide or device so long as such regulation does not permit sale or use prohibited under the Act, and does not restrict further the use of a general use pesticide by requiring a license or permit.

Subsection (b) preempts any State labeling or packaging requirements differing from such requirements under the Act.

Subsection (c) provides the Administrator with authority to certify a State for the purpose of registering pesticides formulated for intrastate distribution to meet specific local needs. The purpose of this subsection is to give States the opportunity to meet expeditiously and with less cost and administrative burden on the registrant the problem of registering for limited local use a pesticide needed to treat sudden pest infestation.

Section 25. Authority of the Administrator

Subsection (a) of this section authorizes the Administrator to prescribe regulations to carry out the Act.

Subsection (b) provides for exemption of pesticides adequately regulated by another Federal agency or unnecessary to be subject to the Act.

Subsection (c) authorizes the Administrator, after notice and opportunity for hearing, to declare as pests certain forms of life, determine which pesticides are highly toxic to man, establish packaging standards, specify classes of devices subject to the Act, prescribe regulations for the discoloration or coloring of pesticides, and determine and establish suitable names to be used in ingredient statements.

Section 26. Severability

This standard severability section states that the provisions of the Act are severable, and the invalidity of one does not affect the validity of the others.

Section 27. Authorization for Appropriations

This section authorizes appropriation of such sums as may be necessary to carry out the provisions of the Act for fiscal years 1972, 1973, and 1974. Thereafter new legislation will be necessary to determine authorized appropriations.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):¹

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT²

AN ACT

To regulate the marketing of economic poisons and devices, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[TITLE

[SECTION 1. This Act may be cited as the "Federal Insecticide, Fungicide, and Rodenticide Act."

[DEFINITIONS

[SEC. 2. For the purposes of this Act—

[a. The term "economic poison" means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Secretary shall declare to be a pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

[b. The term "device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, nematodes, or such other pests as may be designated by the Secretary,¹ but not including equipment used for the application of economic poisons when sold separately therefrom.

¹ The changes in existing law shown herein reflect the correction of various typographical and clerical errors in H. R. 10729, as reported to the House.

² Section 4 of H. R. 10729 provides effective dates for various provisions of this Act.

³ The functions of the Secretary of Agriculture and the Department of Agriculture were transferred to the Administrator of the Environmental Protection Agency pursuant to Reorganization Plan No. 3 of 1970, effective December 2, 1970, therefore the reference to the word "Secretary" in this statute should be construed as being the "Administrator" of EPA.

[c. The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

[d. The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.

[e. The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the Secretary¹ shall declare to be a pest.

[f. The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

[g. The term "nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

[h. The term "plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

[i. The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

[j. The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

[k. The term "nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

[l. The term "weed" means any plant which grows where not wanted.

[m. The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

[n. The term "fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

[o. The term "ingredient statement" means either—

[(1) a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; or

[(2) a statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the economic poison (except option 1

shall apply if the preparation is highly toxic to man, determined as provided in section 6 of this Act); and, in addition to (1) or (2) in case the economic poison contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

[p. The term "active ingredient" means—

[(1) in the case of an economic poison other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

[(2) in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;

[q. The term "inert ingredient" means an ingredient which is not active.

[r. The term "antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

[s. The term "person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

[t. The term "Territory" means any Territory or possession of the United States, excluding the Canal Zone.

[u. The term "Secretary" means the Secretary of Agriculture.

[v. The term "registrant" means the person registering any economic poison pursuant to the provisions of this Act.

[w. The term "label" means the written, printed, or graphic matter on, or attached to, the economic poison or device or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison or device.

[x. The term "labeling" means all labels and other written, printed, or graphic matter—

[(1) upon the economic poison or device or any of its containers or wrappers;

[(2) accompanying the economic poison or device at any time;

[(3) to which reference is made on the label or in literature accompanying the economic poison or device, except to current official publications of the United States Departments of Agriculture and Interior, the United States Public Health Service, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of economic poisons;

[y. The term "adulterated" shall apply to any economic poison if its strength or purity falls below the professed standard or quality as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

[z. The term "misbranded" shall apply—

[(1) to any economic poison or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

[(2) to any economic poison—

[(a) if it is an imitation of or is offered for sale under the name of another economic poison;

[(b) if its labeling bears any reference to registration under this Act other than the registration number assigned to the economic poison;

[(c) if the labeling accompanying it does not contain directions for use which are necessary and if complied with adequate for the protection of the public;

[(d) if the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living man and other vertebrate animals, vegetation, and useful invertebrate animals;

[(e) if the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase: *Provided*, That the Secretary¹ may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

[(f) if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

[(g) if in the case of an insecticide, nematocide, fungicide, or herbicide when used as directed or in accordance with commonly recognized practice it shall be injurious to living man or other vertebrate animals, or vegetation, except weeds, to which it is applied, or to the person applying such economic poison; or

[(h) if in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such economic poison: *Provided*, That physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations; or

[(i) if its packaging or labeling is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Poison Prevention Packaging Act of 1970.

[PROHIBITED ACTS

[SEC. 3. (a) It shall be unlawful for any person to distribute, sell, or offer for sale in any Territory or in the District of Columbia, or to ship or deliver for shipment from any State, Territory, or the District of Columbia to any other State, Territory, or the District of Colum-

bia, or to any foreign country, or to receive in any State, Territory, or the District of Columbia from any other State, Territory, or the District of Columbia, or foreign country, and having so received, deliver or offer to deliver in the original unbroken package to any other person, any of the following:

[(1) Any economic poison which is not registered pursuant to the provisions of section 4 of this Act, or any economic poison if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of an economic poison differs from its composition as represented in connection with its registration: *Provided*, That in the discretion of the Secretary, a change in the labeling or formula of an economic poison may be made within a registration period without requiring reregistration of the product.

[(2) Any economic poison unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container cannot be clearly read, a label bearing—

[(a) the name and address of the manufacturer, registrant, or person for whom manufactured;

[(b) the name, brand, or trade-mark under which said article is sold;

[(c) the net weight or measure of the content: *Provided*, That the Secretary may permit reasonable variations; and

[(d) when required by regulation of the Secretary to effectuate the purposes of this Act, the registration number assigned to the article under this Act.

[(3) Any economic poison which contains any substance or substances in quantities highly toxic to man, determined as provided in section 6 of this Act, unless the label shall bear, in addition to any other matter required by this Act—

[(a) the skull and crossbones;

[(b) the word "poison" prominently (IN RED) on a background of distinctly contrasting color; and

[(c) a statement of an antidote for the economic poison.

[(4) The economic poisons commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this Act, or any other white powder economic poison which the Secretary, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored unless it has been so colored or discolored: *Provided*, That the Secretary may exempt any economic poison to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if he determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

[(5) Any economic poison which is adulterated or misbranded or any device which is misbranded

[b. Notwithstanding any other provision of this Act, no article shall be deemed in violation of this Act when intended solely for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser.

[c. It shall be unlawful—

[(1) for any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this Act or the rules and regulations promulgated hereunder, or to add any substance to, or take any substance from, an economic poison in a manner that may defeat the purpose of this Act;

[(2) for any manufacturer, distributor, dealer, carrier, or other person to refuse, upon a request in writing specifying the nature or kind of economic poison or device to which such request relates, to furnish to or permit any person designated by the Secretary to have access to and to copy such records as authorized by section 5 of this Act;

[(3) for any person to give a guaranty or undertaking provided for in section 7 which is false in any particular, except that a person who receives and relies upon a guaranty authorized under section 7 may give a guaranty to the same effect, which guaranty shall contain in addition to his own name and address the name and address of the person residing in the United States from whom he received the guaranty or undertaking; and

[(4) for any person to use for his own advantage or to reveal, other than to the Secretary, or officials or employees of the United States Department of Agriculture, or other Federal agencies, or to the courts in response to a subpoena, or to physicians, and in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, in accordance with such directions as the Secretary may prescribe, any information relative to formulas of products acquired by authority of section 4 of this Act.

[REGISTRATION

[SEC. 4. a. Every economic poison which is distributed, sold, or offered for sale in any Territory or the District of Columbia, or which is shipped or delivered for shipment from any State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or which is received from any foreign country shall be registered with the Secretary: *Provided*, That products which have the same formula, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same economic poison may be registered as a single economic poison; and additional names and labels shall be added by supplement statements; the applicant for registration shall file with the Secretary a statement including—

[(1) the name and address of the applicant for registration and the name and address of the person whose name will appear on the label, if other than the applicant for registration;

[(2) the name of the economic poison;

[(3) a complete copy of the labeling accompanying the economic poison and a statement of all claims to be made for it, including the directions for use; and

[(4) if requested by the Secretary, a full description of the tests made and the results thereof upon which the claims are based.

[b. The Secretary, whenever he deems it necessary for the effective administration of this Act, may require the submission of the complete formula of the economic poison. If it appears to the Secretary that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of section 3 of this Act, he shall register it.

[c. If it does not appear to the Secretary that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this Act, he shall notify the applicant for registration of the manner in which the article, labeling, or other material required to be submitted fail to comply with the Act so as to afford the applicant for registration an opportunity to make the corrections necessary. If, upon receipt of such notice, the applicant for registration does not make the corrections, the Secretary shall refuse to register the article. The Secretary, in accordance with the procedures specified herein, may suspend or cancel the registration of an economic poison whenever it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of this Act. Whenever the Secretary refuses registration of an economic poison or determines that registration of an economic poison should be canceled, he shall notify the applicant for registration or the registrant of his action and the reasons therefor. Whenever an application for registration is refused, the applicant, within thirty days after service of notice of such refusal, may file a petition requesting that the matter be referred to an advisory committee or file objections and request a public hearing in accordance with this section. A cancellation of registration shall be effective thirty days after service of the foregoing notice unless within such time the registrant (1) makes the necessary corrections; (2) files a petition requesting that the matter be referred to an advisory committee; or (3) files objections and requests a public hearing. Each advisory committee shall be composed of experts, qualified in the subject matter and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Secretary. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence, all of which costs may be assessed against the petitioner, unless the committee shall recommend in favor of the petitioner or unless the matter was referred to the advisory committee by the Secretary. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Secretary shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee. The Secretary shall forthwith submit to such committee

the application for registration of the article and all relevant data before him. The petitioner, as well as representatives of the United States Department of Agriculture, shall have the right to consult with the advisory committee. As soon as practicable after any such submission, but not later than sixty days thereafter, unless extended by the Secretary for an additional sixty days, the committee shall, after independent study of the data submitted by the Secretary and all other pertinent information available to it, submit a report and recommendation to the Secretary as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations. After due consideration of the views of the committee and all other data before him, the Secretary shall, within ninety days after receipt of the report and recommendations of the advisory committee, make his determination and issue an order, with findings of fact, with respect to registration of the article and notify the applicant for registration or registrant. The applicant for registration, or registrant, may, within sixty days from the date of the order of the Secretary, file objections thereto and request a public hearing thereon. In the event a hearing is requested, the Secretary shall, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 7(c) of the Administrative Procedure Act (5 U.S.C. 1006(c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: *Provided*, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, but not later than ninety days, the Secretary shall evaluate the data and reports before him, act upon such objections and issue an order granting, denying, or canceling the registration or requiring modification of the claims or the labeling. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reason certified to the Secretary by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. In connection with consideration of any registration or application for registration under this section, the Secretary may consult with any other Federal agency or with an advisory committee appointed as herein provided. Notwithstanding the provisions of section 3(c)(4), information relative to formulas of products acquired by authority of this section may be revealed, when necessary under this section, to an advisory committee, or to any Federal agency consulted, or at a public hearing, or in findings of fact issued by the Secretary. All data submitted to an advisory committee in support of a petition under this section shall be considered confidential by such advisory committee: *Provided*, That this provision shall not be construed as prohibiting the use of such data by the committee in connection with its consultation with the petitioner or representatives of the United States Department of Agriculture, as provided for herein, and in connection with its report and recommendations to the Secretary.

Notwithstanding any other provision of this section, the Secretary may, when he finds that such action is necessary to prevent an imminent hazard to the public, by order, suspend the registration of an economic poison immediately. In such case, he shall give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this section. Final orders of the Secretary under this section shall be subject to judicial review, in accordance with the provisions of subsection d. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under section 3 of this Act.

[d. In a case of actual controversy as to the validity of any order under this section, any person who will be adversely affected by such order may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee. If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Secretary may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 18 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section.

[e. Notwithstanding any other provision of this Act, registration is not required in the case of an economic poison shipped from one plant to another plant operated by the same person and used solely at such plant as a constituent part to make an economic poison which is registered under this Act.

[f. The Secretary is authorized to cancel the registration of any economic poison at the end of a period of five years following the registration of such economic poison or at the end of any five-year period thereafter, unless the registrant, prior to the expiration of each

such five-year period, requests in accordance with regulations issued by the Secretary that such registration be continued in effect.

【BOOKS AND RECORDS

【SEC. 5. For the purposes of enforcing the provisions of this Act, any manufacturer, distributor, carrier, dealer, or any other person who sells or offers for sale, delivers or offers for delivery, or who receives or holds any economic poison or device subject to this Act, shall, upon request of any employee of the United States Department of Agriculture or any employee of any State, Territory, or political subdivision, duly designated by the Secretary, furnish or permit such person at all reasonable times to have access to, and to copy all records showing the delivery, movement, or holding of such economic poison or device, including the quantity, the date of shipment and receipt, and the name of the consignor and consignee; and in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the economic poison or device. Notwithstanding this provision, however, the specific evidence obtained under this section, or any evidence which is directly or indirectly derived from such evidence, shall not be used in a criminal prosecution of the person from whom obtained.

【ENFORCEMENT

【SEC. 6. a. The Secretary (except as otherwise provided in this section) is authorized to make rules and regulations for carrying out the provisions of this Act, including the collection and examination of samples of economic poisons and devices subject to this Act and the determination and establishment of suitable names to be used in the ingredient statement. The Secretary is, in addition, authorized after opportunity for hearing—

【(1) to declare a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles, or substances;

【(2) to determine economic poisons, and quantities of substances contained in economic poisons, which are highly toxic to man; and

【(3) to determine standards of coloring or discoloring for economic poisons, and to subject economic poisons to the requirements of section 3a (4) of this Act.

【b. The Secretary of the Treasury and the Secretary of Agriculture shall jointly prescribe regulations for the enforcement of section 10 of this Act.

【c. The examination of economic poisons or devices shall be made in the United States Department of Agriculture or elsewhere as the Secretary may designate for the purpose of determining from such examination whether they comply with the requirements of this Act, and if it shall appear from any such examination that they fail to comply with the requirements of this Act, the Secretary¹ shall cause notice to be given to the person against whom criminal proceedings are contemplated. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings, and if in the opinion of the Secretary

it appears that the provisions of this Act have been violated by such person, then the Secretary shall certify the facts to the proper United States attorney, with a copy of the results of the analysis or the examination of such article: *Provided*, That nothing in this Act shall be construed as requiring the Secretary to report for prosecution or for the institution of libel proceedings minor violations of this Act whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

[d. It shall be the duty of each United States attorney, to whom the Secretary or his agents shall report any violation of this Act, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay.

[e. The Secretary shall, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of this Act.

[EXEMPTIONS

[SEC. 7. a. The penalties provided for a violation of section 3a of this Act shall not apply to—

[(1) any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom he purchased and received in good faith the article in the same unbroken package, to the effect that the article was lawfully registered at the time of sale and delivery to him, and that it complies with the other requirements of this Act, designating this Act. In such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provisions of this Act;

[(2) any carrier while lawfully engaged in transporting an economic poison or device if such carrier upon request by a person duly designated by the Secretary shall permit such person to copy all records showing the transactions in and movement of the articles;

[(3) to public officials while engaged in the performance of their official duties;

[(4) to the manufacturer or shipper of an economic poison for experimental use only by or under the supervision of any Federal or State agency authorized by law to conduct research in the field of economic poisons; or by others if a permit has been obtained before shipment in accordance with regulations promulgated by the Secretary.

[PENALTIES

[SEC. 8. a. Any person violating section 3a (1) of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than \$1,000.

[b. Any person violating any provision other than section 3a (1) of this Act shall be guilty of a misdemeanor and shall upon conviction be fined not more than \$500 for the first offense, and on conviction for each subsequent offense be fined not more than \$1,000 or imprisoned for not more than one year, or both such fine and imprisonment: *Provided*, That an offense committed more than five years after the last previous conviction shall be considered a first offense. An article

the registration of which has been terminated may not again be registered unless the article, its labeling, and other material required to be submitted appear to the Secretary to comply with all the requirements of this Act.

【c. Notwithstanding any other provision of this section, in case any person, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 4 of this Act, he shall be fined not more than \$10,000 or imprisoned for not more than three years, or both such fine and imprisonment.

【d. When construing and enforcing the provisions of this Act, the act, omission, or failure, of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

【SEIZURES

【SEC. 9. a. Any economic poison or device that is being transported from one State, Territory, or District to another, or, having been transported, remains unsold or in original unbroken packages, or that is sold or offered for sale in the District of Columbia or any Territory, or that is imported from a foreign country, shall be liable to be proceeded against in any district court of the United States in the district where it is found and seized for confiscation by a process of libel for condemnation—

【(1) in the case of an economic poison—

【(a) if it is adulterated or misbranded;

【(b) if it is not registered pursuant to the provisions of section 4 of this Act;

【(c) if it fails to bear on its label the information required by this Act; or

【(d) if it is a white powder economic poison and is not colored as required under this Act; or

【(2) in the case of a device if it is misbranded.

【b. If the article is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the legal costs, shall be paid into the Treasury of the United States, but the article shall not be sold contrary to the provisions of this Act or of the laws of the jurisdiction in which it is sold: *Provided*, That upon the payment of the costs of the libel proceedings and the execution and delivery of a good and sufficient bond conditioned that the article shall not be sold or otherwise disposed of contrary to the provisions of this Act or the laws of any State, Territory, or District in which sold, the court may direct that such articles be delivered to the owner thereof. The proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty, except that neither party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

【c. When a decree of condemnation is entered against the article, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article.

[IMPORTS]

[SEC. 10. The Secretary of the Treasury shall notify the Secretary of Agriculture of the arrival of economic poisons and devices offered for importation and shall deliver to the Secretary of Agriculture, upon his request, samples of economic poisons or devices which are being imported or offered for import into the United States, giving notice to the owner or consignee, who may appear before the Secretary of Agriculture and have the right to introduce testimony. If it appears from the examination of a sample that it is adulterated, or misbranded or otherwise violates the prohibitions set forth in this Act, or is otherwise dangerous to the health of the people of the United States, or is of a kind forbidden entry into or forbidden to be sold or restricted in sale in the country in which it is made or from which it is exported, the said article may be refused admission, and the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of any goods refused delivery which shall not be exported by the consignee within three months from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe: *Provided*, That the Secretary of the Treasury may deliver to the consignee such goods pending examination and decision in the matter on execution of a penal bond for the amount of the full invoice value of such goods, together with the duty thereon, and on refusal to return such goods for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of the bond: *And provided further*, That all charges for storage, cartage, and labor on goods which are refused admission or delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee.

[DELEGATION OF DUTIES]

[SEC. 11. All authority vested in the Secretary by virtue of the provisions of this Act may with like force and effect be executed by such employees of the United States Department of Agriculture ¹ as the Secretary may designate for the purpose.

[AUTHORIZATION FOR APPROPRIATIONS AND EXPENDITURES]

[SEC. 12. a. There is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for the purposes and administration of this Act. In order to carry out the provisions of this Act, which take effect prior to the repeal of the Insecticide Act of 1910, appropriations available for the enforcement of such Act are authorized to be made available.

[b. The Secretary is authorized from the funds appropriated for this Act to make such expenditures as he deems necessary, including rents, travel, supplies, books, samples, testing devices, furniture, equipment, and such other expenses as may be necessary to the administration of this Act.

【COOPERATION

【SEC. 13. The Secretary is authorized to cooperate with any other department or agency of the Federal Government and with the official agricultural or other regulatory agency of any State, or any State, Territory, District, possession, or any political subdivision thereof, in carrying out the provisions of this Act, and in securing uniformity of regulations.

【SEPARABILITY

【SEC. 14. If any provision of this Act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this Act and the applicability thereof to other persons and circumstances shall not be affected thereby.

【EFFECTIVE DATE

【SEC. 15. All provisions of this Act, except section 3, "Prohibited Acts"; section 8, "Penalties"; section 9, "Seizures"; and section 10, "Imports", shall take effect upon enactment, and sections 3, 8, 9, and 10 of this Act shall take effect as follows: (1) As to devices, upon enactment, (2) as to rodenticides and herbicides, six months after enactment, and (3) as to insecticides, fungicides, and all other economic actions, one year after enactment: *Provided*, That the Secretary, upon application, may at any time within one year after sections 3, 8, 9, and 10 of this Act become applicable to devices, rodenticides and herbicides, and insecticides, fungicides, and other economic poisons, respectively, if he determines that such action will not be unduly detrimental to the public interest, and is necessary to avoid hardship, exempt, under such terms and conditions as he may prescribe, any economic poison from the provisions of this Act if such economic poison was labeled, shipped, and delivered by the manufacturer thereof prior to the time the sections of this Act referred to above become applicable to such economic poison and in case the economic poison is an insecticide or fungicide if its sale, delivery, or shipment has not been and will not be in violation of the provision of the Insecticide Act of 1910.

【REPEALS

【SEC. 16. The Insecticide Act of 1910, approved April 26, 1910 (36 Stat. 331, 7 U.S.C. 121-134), is hereby repealed one year after the date of the enactment of this Act: *Provided*, That, with respect to violations, liabilities incurred, or appeals taken prior to said date, and with respect to sales, shipments, or deliveries of insecticides and fungicides under an exemption granted by the Secretary ¹ under section 15, all provisions of the Insecticide Act of 1910 shall be deemed to remain in full force for the purpose of sustaining any proper suit, action, or other proceeding with respect to any such violations, liabilities, appeals, or to such sales, shipments or deliveries of insecticides and fungicides exempted by the Secretary under section 15.】

SEC. 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) *SHORT TITLE*.—This Act may be cited as the “Federal Insecticide, Fungicide, and Rodenticide Act”.

(b) *TABLE OF CONTENTS*.—

Section 1. Short title and table of contents.

- (a) Short title.
- (b) Table of contents.

Sec. 2. Definitions.

- (a) Active ingredient.
- (b) Administrator.
- (c) Adulterated.
- (d) Animal.
- (e) Certified pesticide applicator, etc.
 - (1) Certified pesticide applicator.
 - (2) Private pesticide applicator.
 - (3) Commercial pesticide applicator.
- (f) Defoliant.
- (g) Desiccant.
- (h) Device.
- (i) District court.
- (j) Environment.
- (k) Fungus.
- (l) Imminent hazard.
- (m) Inert ingredient.
- (n) Ingredient statement.
- (o) Insect.
- (p) Label and labeling.
 - (1) Label.
 - (2) Labeling.
- (q) Misbranded.
- (r) Nematode.
- (s) Person.
- (t) Pest.
- (u) Pesticide.
- (v) Plant regulator.
- (w) Producer and produce.
- (x) Protect health and the environment.
- (y) Registrant.
- (z) Registration.
- (aa) State.
- (bb) Substantial adverse effects on the environment.
- (cc) Weed.

Sec. 3. Registration of pesticides.

- (a) Requirement.
- (b) Exemptions.
- (c) Procedure for registration.
 - (1) Statement required.
 - (2) Data in support of registration.
 - (3) Time for acting with respect to application.
 - (4) Notice of application.
 - (5) Approval of registration.
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- (d) Classification of pesticides.
 - (1) Classification for general use, restricted use, or both.
 - (2) Change in classification.
- (e) Products with same formulation and claims.
- (f) Miscellaneous.
 - (1) Effect of change of labeling or formulation.
 - (2) Registration not a defense.
 - (3) Authority to consult other Federal agencies.

Sec. 4. Use of restricted use pesticide; certified applicators.

- (a) Certification procedure.
 - (1) Federal certification.
 - (2) State certification.
- (b) State plans.

- Sec. 5. *Experimental use permits.*
- (a) *Issuance.*
 - (b) *Temporary tolerance level.*
 - (c) *Use under permit.*
 - (d) *Studies.*
 - (e) *Revocation.*
- Sec. 6. *Administrative review; suspension.*
- (a) *Cancellation after five years.*
 - (1) *Procedure.*
 - (2) *Information.*
 - (b) *Cancellation and change in classification.*
 - (c) *Suspension.*
 - (1) *Order.*
 - (2) *Duration of order.*
 - (3) *Judicial review.*
 - (d) *Public hearings and scientific review.*
 - (e) *Judicial review.*
- Sec. 7. *Registration of establishments.*
- (a) *Requirement.*
 - (b) *Registration.*
 - (c) *Information required.*
 - (d) *Confidential records and information.*
- Sec. 8. *Books and records.*
- (a) *Requirement.*
 - (b) *Inspection.*
- Sec. 9. *Inspection of establishments, etc.*
- (a) *In general.*
 - (b) *Warrants.*
 - (c) *Enforcement.*
 - (1) *Certification of facts to Attorney General.*
 - (2) *Notice not required.*
 - (3) *Warning notices.*
- Sec. 10. *Protection of trade secrets, etc.*
- (a) *In general.*
 - (b) *Disclosure.*
- Sec. 11. *Standards applicable to pesticide applicators.*
- (a) *In general.*
 - (b) *Separate standards.*
- Sec. 12. *Unlawful acts.*
- (a) *In general.*
 - (b) *Exemptions.*
- Sec. 13. *Stop sale, use, removal, and seizure.*
- (a) *Stop sale, etc., orders.*
 - (b) *Seizure.*
 - (c) *Disposition after condemnation.*
 - (d) *Court costs, etc.*
- Sec. 14. *Penalties.*
- (a) *Civil penalties.*
 - (1) *In general.*
 - (2) *Private pesticide applicator.*
 - (3) *Hearing.*
 - (4) *References to Attorney General.*
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 - (1) *In general.*
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 - (3) *Disclosure of information.*
 - (4) *Act of officers, agents, etc.*
- Sec. 15. *Indemnities.*
- (a) *Requirement.*
 - (b) *Amount of payment.*
 - (1) *In general.*
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- Sec. 16. *Administrative procedure; judicial review.*
- (a) *Application of Administrative Procedure Act.*
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 - (c) *Jurisdiction of district courts.*
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- Sec. 17. Imports and exports.
- (a) Pesticides and devices intended for export.
 - (b) Cancellation notices furnished to foreign governments.
 - (c) Importation of pesticides and devices.
 - (d) Cooperation in international efforts.
 - (e) Regulations.
- Sec. 18. Exemption of Federal agencies.
- Sec. 19. Disposal and transportation.
- (a) Procedures.
 - (b) Advice to Secretary of Transportation.
- Sec. 20. Research and monitoring.
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- Sec. 21. Solicitation of public comments.
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- Sec. 24. Authority of States and political subdivisions.
- (a) Cooperative agreements.
 - (b) Contracts and training.
- Sec. 25. Authority of Administrator.
- (a) Regulations.
 - (b) Exemption of pesticides.
 - (c) Other authority.
- Sec. 26. Severability.
- Sec. 27. Authorization for appropriations.

SEC. 2. DEFINITIONS.

For purposes of this Act—

- (a) **ACTIVE INGREDIENT.**—The term “active ingredient” means—
- (1) in the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate any pest;
 - (2) in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof;
 - (3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant; and
 - (4) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.
- (b) **ADMINISTRATOR.**—The term “Administrator” means the Administrator of the Environmental Protection Agency.
- (c) **ADULTERATED.**—The term “adulterated” applies to any pesticide if:
- (1) its strength or purity falls below the professed standard or quality as expressed on its labeling under which it is sold;
 - (2) any substance has been substituted wholly or in part for the pesticide;
- or
- (3) any valuable constituent of the pesticide has been wholly or in part abstracted.
- (d) **ANIMAL.**—The term “animal” means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.
- (e) **CERTIFIED PESTICIDE APPLICATOR, ETC.**—
- (1) **CERTIFIED PESTICIDE APPLICATOR.**—The term “certified pesticide applicator” means any individual who is certified under section 4 as authorized to use or supervise the use of any pesticide which is classified for restricted use.

(2) **PRIVATE PESTICIDE APPLICATOR.**—The term “private pesticide applicator” means a certified pesticide applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.

(3) **COMMERCIAL PESTICIDE APPLICATOR.**—The term “commercial pesticide applicator” means a certified pesticide applicator (whether or not he is a private pesticide applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided by paragraph (2).

(f) **DEFOLIANT.**—The term “defoliant” means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(g) **DESICCANT.**—The term “desiccant” means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(h) **DEVICE.**—The term “device” means any instrument or contrivance (other than a firearm) which (1) is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other micro-organism on or in living man or other living animals), and (2) is within a class of devices in respect of which the Administrator has made the determination referred to in section 25(c)(4).

(i) **DISTRICT COURT.**—The term “district court” means a United States district court, the District Court of Guam, the District Court of the Virgin Islands, and the highest court of American Samoa.

(j) **ENVIRONMENT.**—The term “environment” includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these.

(k) **FUNGUS.**—The term “fungus” means any non-chlorophyll-bearing thallophyte (that is, any non-chlorophyll-bearing plant of a lower order than mosses and liverworts), as for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other animals and those on or in processed food, beverages, or pharmaceuticals.

(l) **IMMINENT HAZARD.**—The term “imminent hazard” means a situation which exists when the continued use of a pesticide during the time required for cancellation proceeding would likely result in substantial adverse effects on the environment.

(m) **INERT INGREDIENT.**—The term “inert ingredient” means an ingredient which is not active.

(n) **INGREDIENT STATEMENT.**—The term “ingredient statement” means a statement which contains—

(1) the name of each active ingredient in the pesticide;

(2) if all the uses of the pesticide are classified for general use, then either—

(i) the total percentage of all inert ingredients, and of all active ingredients, in the pesticide; or

(ii) the percentage of each active ingredient, and the total percentage of all inert ingredients, in the pesticide; and if all the uses of the pesticide are not classified for general use, then the information required under (ii); and

(3) if the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elemental arsenic.

(o) *INSECT*.—The term “insect” means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class *insecta*, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and wood lice.

(p) *LABEL AND LABELING*.—

(1) *LABEL*.—The term “label” means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

(2) *LABELING*.—The term “labeling” means all labels and all other written, printed, or graphic matter—

(A) accompanying the pesticide or device at any time; or

(B) to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the United States Departments of Agriculture and Interior, the Department of Health, Education, and Welfare, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides.

(q) *MISBRANDED*.—

(1) A pesticide or device subject to this Act is misbranded if—

(A) its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(B) it is contained in a package or other container or wrapping which does not conform to the standards established by the Administrator pursuant to section 25(c)(3);

(C) it is an imitation of, or is offered for sale under the name of, another pesticide or device;

(D) its labeling does not bear the registration number assigned under section 7 to each establishment in which it was produced;

(E) any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(F) if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 3(d) of this Act, is adequate to protect health and the environment; or

(G) if the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 3(d) of this Act, is adequate to protect health and the environment.

(2) *A pesticide is misbranded if—*

(A) the label does not bear an ingredient statement on that part of the immediate container (and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package) which is presented or displayed under customary conditions of purchase, except that a pesticide is not misbranded under this subparagraph if:

(i) the size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and

(ii) the ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the Administrator;

(B) the labeling does not contain a statement of the use classification under which the product is registered;

(C) there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing—

(i) the name and address of the producer, registrant, or person for whom produced;

(ii) the name, brand, or trademark under which the pesticide is sold;

(iii) the net weight or measure of the content: Provided, That the Administrator may permit reasonable variations; and

(iv) when required by regulation of the Administrator to effectuate the purposes of this Act, the registration number assigned to the pesticide under this Act, and the use classification; and

(D) the pesticide contains any substance or substances in quantities highly toxic to man, unless the label shall bear, in addition to any other matter required by this Act—

(i) the skull and crossbones;

(ii) the word "poison" prominently in red on a background of distinctly contrasting color; and

(iii) a statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

(r) **NEMATODE.**—The term "nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts; may also be called nemas or eelworms.

(s) **PERSON.**—The term "person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

(t) **PEST.**—The term "pest" means (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 25(c)(1).

(u) **PESTICIDE.**—The term “pesticide” means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(v) **PLANT REGULATOR.**—The term “plant regulator” means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(w) **PRODUCER AND PRODUCE.**—The term “producer” means the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device. The term “produce” means to manufacture, prepare, compound, propagate, or process any pesticide or device.

(x) **PROTECT HEALTH AND THE ENVIRONMENT.**—The terms “protect health and the environment” and “protection of health and the environment” means protection against any injury to man and protection against any substantial adverse effects on environmental values, taking into account the public interest, including benefits from the use of the pesticide.

(y) **REGISTRANT.**—The term “registrant” means a person who has registered any pesticide pursuant to the provisions of this Act.

(q) **REGISTRATION.**—The term “registration” includes reregistration.

(aa) **STATE.**—The term “State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa.

(bb) **SUBSTANTIAL ADVERSE EFFECTS ON THE ENVIRONMENT.**—The term “substantial adverse effects on the environment” means any injury to man or any substantial adverse effects on environmental values, taking into account the public interest, including benefits from the use of the pesticide.

(cc) **WEED.**—The term “weed” means any plant which grows where not wanted.

SEC. 3. REGISTRATION OF PESTICIDES.

(a) **REQUIREMENT.**—Except as otherwise provided by this Act, no person in any State may distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person any pesticide which is not registered with the Administrator.

(b) **EXEMPTIONS.**—A pesticide which is not registered with the Administrator may be transferred if—

(1) the transfer is from one registered establishment to another registered establishment operated by the same producer solely for packaging at the second establishment or for use as a constituent part of another pesticide produced at the second establishment; or

(2) the transfer is pursuant to and in accordance with the requirements of an experimental use permit.

(c) **PROCEDURE FOR REGISTRATION.**—

(1) **STATEMENT REQUIRED.**—Each applicant for registration of a pesticide shall file with the Administrator a statement which includes—

(A) the name and address of the applicant and of any other person whose name will appear on the labeling;

(B) the name of the pesticide;

(C) a complete copy of the labeling of the pesticide, a statement of all claims to be made for it, and any directions for its use;

(D) if requested by the Administrator, a full description of the tests made and the results thereof upon which the claims are based, except that data submitted in support of an application shall not, without permission of the applicant, be considered by the Administrator in support of any other application for registration;

(E) the complete formula of the pesticide; and

(F) a request that the pesticide be classified for general use, for restricted use, or for both.

(2) **DATA IN SUPPORT OF REGISTRATION.**—The Administrator shall publish guidelines specifying the kinds of information which will be required to support the registration of a pesticide and shall revise such guidelines from time to time. If thereafter he requires any additional kind of information he shall permit sufficient time for applicants to obtain such additional information. Except as provided by subsection (c)(1)(D) of this section and section 10, within 30 days after the Administrator registers a pesticide under this Act he shall make available to the public the data called for in the registration statement together with such other scientific information as he deems relevant to his decision.

(3) **TIME FOR ACTING WITH RESPECT TO APPLICATION.**—The Administrator shall review the data after receipt of the application and shall, as expeditiously as possible, either register the pesticide in accordance with paragraph (5), or notify the applicant of his determination that it does not comply with the provisions of the Act in accordance with paragraph (6).

(4) **NOTICE OF APPLICATION.**—The Administrator shall publish in the Federal Register, promptly after receipt of the statement and other data required pursuant to paragraphs (1) and (2), a notice of each application for registration of any pesticide if it contains any new active ingredient or if it would entail a changed use pattern. The notice shall provide for a period of 30 days in which any Federal agency or any other interested person may comment.

(5) **APPROVAL OF REGISTRATION.**—The Administrator shall register a pesticide if he determines that, when considered with any restrictions imposed under subsection (d)—

(A) its composition is such as to warrant the proposed claims for it;

(B) its labeling and other material required to be submitted comply with the requirements of this Act; and

(C) it will perform its intended function without substantial adverse effects on the environment.

The Administrator shall not make any lack of essentiality a criterion for denying registration of any pesticide.

(6) **DENIAL OF REGISTRATION.**—If the Administrator determines that the requirements of paragraph (5) for registration are not satisfied, he shall notify the applicant for registration of his determination and of his reasons (including the factual basis) therefor, and that,

unless the applicant corrects the conditions and notifies the Administrator thereof during the 30-day period beginning with the day after the date on which the applicant receives the notice, the Administrator will refuse to register the pesticide. Whenever the Administrator refuses to register a pesticide, he shall notify the applicant of his decision and of his reasons (including the factual basis) therefor. Upon such notification, the applicant for registration shall have the same remedies as provided for the registrant in section 6.

(d) *CLASSIFICATION OF PESTICIDES.*—

(1) *CLASSIFICATION FOR GENERAL USE, RESTRICTED USE, OR BOTH.*—

(A) As a part of the registration of a pesticide the Administrator shall classify it as being for general use or for restricted use, provided that if the Administrator determines that some of the uses for which the pesticide is registered should be for general use and that other uses for which it is registered should be for restricted use, he shall classify it for both general use and restricted use. If some of the uses of the pesticide are classified for general use and other uses are classified for restricted use, the directions relating to its general uses shall be clearly separated and distinguished from those directions relating to its restricted uses.

(B) If the Administrator determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, will not cause substantial adverse effects on the environment, he will classify the pesticide, or the particular use or uses of the pesticide to which the determination applies for general use.

(C) If the Administrator determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, may cause, without additional regulatory restrictions, substantial adverse effects on the environment, including injury to the applicator, he shall classify the pesticide, or the particular use or uses to which the determination applies, for restricted use.

(i) If the Administrator classifies a pesticide, or one or more uses of such pesticide, for restricted use because of a determination that its acute dermal or inhalation toxicity of the pesticide presents a hazard to the applicator or other persons, the pesticide shall be applied for any use to which the restricted classification applies only by or under the direct supervision of a certified pesticide applicator.

(ii) If the Administrator classifies a pesticide, or one or more uses of such pesticide, for restricted use because of a determination that its use without additional regulatory restriction may cause substantial adverse effect on the environment, the pesticide shall be applied for any use to which the determination applies only by or under the direct supervision of a certified pesticide applicator, or subject to such other restrictions as the Administrator may determine.

(2) *CHANGE IN CLASSIFICATION.*—If the Administrator determines that a change in the classification of any use of a pesticide from general use to restricted use is necessary to prevent substantial adverse effects on the environment, he shall notify the registrant of such pesticide of such determination at least 30 days before making the change and shall publish the proposed change in the Federal Register.

(e) *PRODUCTS WITH SAME FORMULATION AND CLAIMS.*—Products which have the same formulation, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same pesticide may be registered as a single pesticide; and additional names and labels shall be added by supplemental statements.

(f) *MISCELLANEOUS.*—

(1) *EFFECT OF CHANGE OF LABELING OR FORMULATION.*—If the labeling or formulation for a pesticide is changed, the registration shall be amended to reflect such change if the Administrator determines that the change will not violate any provision of this Act.

(2) *REGISTRATION NOT A DEFENSE.*—In no event shall registration of an article be construed as a defense for the commission of any offense under this Act.

(3) *AUTHORITY TO CONSULT OTHER FEDERAL AGENCIES.*—In connection with consideration of any registration or application for registration under this section, the Administrator may consult with any other Federal agency.

SEC. 4. USE OF RESTRICTED USE PESTICIDE; CERTIFIED APPLICATORS.

(a) *CERTIFICATION PROCEDURE.*—

(1) *FEDERAL CERTIFICATION.*—Subject to paragraph (2), the Administrator shall prescribe standards for the certification of pesticide applicators. Such standards shall provide that to be certified, an individual must be determined to be competent with respect to the use and handling of pesticides, or of the use and handling of the pesticide or class of pesticides covered by such individual's certification.

(2) *STATE CERTIFICATION.*—If any State, at any time, desires to certify pesticide applicators, the Governor of such State shall submit a State plan for such purpose. The Administrator shall approve the plan submitted by any State, or any modification thereof, if such plan in his judgment—

(A) designates a State agency as the agency responsible for administering the plan throughout the State;

(B) contains satisfactory assurances that such agency has or will have the legal authority and qualified personnel necessary to carry out the plan;

(C) gives satisfactory assurances that the State will devote adequate funds to the administration of the plan;

(D) provides that the State agency will make such reports to the Administrator in such form and containing such information as the Administrator may from time to time require; and

(E) contains satisfactory assurances that State standards for the certification of pesticide applicators conform with those standards prescribed by the Administrator under paragraph (1).

(b) *STATE PLANS.*—If the Administrator rejects a plan submitted under this paragraph, he shall afford the State submitting the plan due

notice and opportunity for hearing before so doing. If the Administrator approves a plan submitted under this paragraph, then such State shall certify pesticide applicators with respect to such State.

SEC. 5. EXPERIMENTAL USE PERMITS.

(a) *ISSUANCE.*—Any person may apply to the Administrator for an experimental use permit for a pesticide. The Administrator may issue an experimental use permit if he determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide under section 3. An application for an experimental use permit may be filed at the time of or before or after an application for registration is filed.

(b) *TEMPORARY TOLERANCE LEVEL.*—If the Administrator determines that the use of a pesticide may reasonably be expected to result in any residue on or in food or feed, he may establish a temporary tolerance level for the residue of the pesticide before issuing the experimental use permit.

(c) *USE UNDER PERMIT.*—Use of a pesticide under an experimental use permit shall be under the supervision of the Administrator, and shall be subject to such terms and conditions and be for such period of time as the Administrator may prescribe in the permit.

(d) *STUDIES.*—When any experimental use permit is issued for a pesticide containing any chemical or combination of chemicals which has not been included in any previously registered pesticide, the Administrator may specify that studies be conducted to detect whether the use of the pesticide under the permit may cause substantial adverse effects on the environment. All results of such studies shall be reported to the Administrator before such pesticide may be registered under section 3.

(e) *REVOCATION.*—The Administrator may revoke any experimental use permit, at any time, if he finds that its terms or conditions are being violated, or that its terms and conditions are inadequate to avoid substantial adverse effects on the environment.

SEC. 6. ADMINISTRATIVE REVIEW; SUSPENSION.

(a) *CANCELLATION AFTER FIVE YEARS.*—

(1) *PROCEDURE.*—The Administrator shall cancel the registration of any pesticide at the end of the five-year period which begins on the date of its registration (or at the end of any five-year period thereafter) unless the registrant, before the end of such period, requests in accordance with regulations prescribed by the Administrator that the registration be continued in effect.

(2) *INFORMATION.*—If at any time after the registration of a pesticide the registrant has additional factual information regarding substantial adverse effects on the environment of the pesticide, he shall submit such information to the Administrator.

(b) *CANCELLATION AND CHANGE IN CLASSIFICATION.*—If the Administrator determines that registration of a pesticide should be canceled or that the classification of a pesticide should be changed, he shall notify the registrant of his intention and of whether he intends to cancel the registration or change the classification and of his reasons (including the factual basis) therefor in writing. Upon receipt of such notice, the registrant may, within 30 days (A) make the necessary corrections and so notify the Administrator, or (B) file objections and request a public hearing. If the registrant does not take any such action, the notice shall, at the end of 30 days from its receipt by the registrant, constitute a final order of cancellation or change in classification. If the registrant

files objections and requests a public hearing, the order of cancellation or change in classification may only be issued after completion of such proceeding.

(c) **SUSPENSION.**—

(1) **ORDER.**—If the Administrator determines that such action is necessary to prevent an imminent hazard during the time required for cancellation proceedings, he may, by order, suspend the registration of the pesticide immediately. No order of suspension may be issued unless at the same time the Administrator issues notices of his intention to cancel the registration of the pesticide. Any remedy elected by the registrant under section 6(a) shall be held as expeditiously as possible.

(2) **DURATION OF ORDER.**—Any suspension order shall remain in effect only until 90 days after the completion of the administrative remedies provided for under section 6(a) or until the Administrator issues his final order either canceling or denying cancellation of the registration, whichever is sooner.

(3) **JUDICIAL REVIEW.**—Any order of suspension shall be subject to immediate review in all actions by the registrant in an appropriate district court, solely to determine whether the order of suspension was arbitrary, capricious or an abuse of discretion, or whether the order was issued in accordance with the procedures established by law. This action may be maintained simultaneously with any administrative review proceeding under section 6.

(d) **PUBLIC HEARINGS AND SCIENTIFIC REVIEW.**—In the event a hearing is requested pursuant to subsection (a) or (d) or determined upon by the Administrator pursuant to subsection (d), such hearing shall be held after due notice for the purpose of receiving evidence relevant and material to the issues raised by the objections filed by the applicant or other interested parties, or to the issues stated by the Administrator, if the hearing is called by the Administrator rather than by the filing of objections. Upon a showing of relevance and reasonable scope of evidence sought by any party to a public hearing, the Hearing Examiner shall issue a subpoena to compel testimony from any person. Upon the request of any party or when in the hearing officer's judgment it is necessary or desirable, the hearing officer shall refer to a Committee of the National Academy of Sciences all relevant questions of scientific fact arising in the course of the public hearing. The Committee of the National Academy of Sciences shall report in writing to the officer within 60 days on these questions of scientific fact. The report shall be made public and shall be considered as part of the hearing record. The Administrator shall enter into appropriate arrangements with the National Academy of Sciences to assure an objective and competent scientific review of the questions presented to Committees of the Academy and to provide such other scientific advisory services as may be required by the Administrator for carrying out the purposes of this Act. The Hearing Examiner shall be guided by the principles of the Federal Rules of Civil Procedure in making any order for the protection of the witness and shall order the payment of reasonable fees and expenses as a condition to requiring his testimony. On contest, the subpoena may be enforced by an appropriate United States District Court in accordance with the principles stated herein and the Administrative Procedure Act. As soon as practicable after completion of the hearing but not later than 90 days thereafter, the Administrator shall evaluate the data and reports before him and issue an order either revoking his notice of intention issued pursuant to this section, or shall issue an order either cancelling the registration, changing the

classification, denying the registration, or requiring modification of the labeling or packaging of the article. Such order shall be based only on substantial evidence of record of such hearing and shall set forth detailed findings of fact upon which the order is based.

(e) **JUDICIAL REVIEW.**—Final orders of the Administrator under this section shall be subject to judicial review pursuant to section 16.

SEC. 7. REGISTRATION OF ESTABLISHMENTS.

(a) **REQUIREMENT.**—No person shall produce any pesticide or device subject to this Act in any State unless the establishment in which it is produced is registered with the Administrator. The application for registration of any establishment shall include the name and address of the establishment and of the producer who operates such establishment.

(b) **REGISTRATION.**—Whenever the Administrator receives an application under subsection (a), he shall register the establishment and assign it an establishment number.

(c) **INFORMATION REQUIRED.**—

(1) Any producer operating an establishment registered under this section shall inform the Administrator within 30 days after it is registered of the types and amounts of pesticides and devices—

(A) which he is currently producing;

(B) which he has produced during the past year; and

(C) which he has sold or distributed during the past year.

The information required by this paragraph shall be kept current and submitted to the Administrator annually as required under such regulations as the Administrator may prescribe.

(2) Any such producer shall, upon the request of the Administrator for the purpose of issuing a stop sale order pursuant to section 13, inform him of the name and address of any recipient of any pesticide produced in any registered establishment which he operates.

(d) **CONFIDENTIAL RECORDS AND INFORMATION.**—Any information submitted to the Administrator pursuant to subsection (c) shall be considered confidential and shall be subject to the provisions of section 10.

SEC. 8. BOOKS AND RECORDS.

(a) **REQUIREMENT.**—The Administrator may prescribe regulations requiring producers to maintain such records with respect to their operations and the pesticides and devices produced as he determines are necessary for the effective enforcement of this Act. No records required under this subsection shall extend to financial data, sales data other than shipment data, pricing data, personnel data, and research data (other than data relating to registered pesticides or to a pesticide for which an application for registration has been filed).

(b) **INSPECTION.**—For the purposes of enforcing the provisions of this Act, any producer, distributor, carrier, dealer, or any other person who sells or offers for sale, delivers or offers for delivery any pesticide or device subject to this Act, shall, upon request of any officer or employee of the Environmental Protection Agency or of any State or political subdivision, duly designated by the Administrator, furnish or permit such person at all reasonable times to have access to, and to copy: (1) all records showing the delivery, movement, or holding of such pesticide or device, including the quantity, the date of shipment and receipt, and the name of the consignor and consignee; or (2) in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the pesticide or devices.

Any inspection with respect to any records and information referred to in this subsection shall not extend to financial data, sales data other than shipment data, pricing data, personnel data, and research data (other than data relating to registered pesticides or to a pesticide for which an application for registration has been filed).

SEC. 9. INSPECTION OF ESTABLISHMENTS, ETC.

(a) *IN GENERAL.*—For purposes of enforcing the provisions of this Act, officers or employees duly designated by the Administrator are authorized—

- (1) to enter, at reasonable times, any establishment; and
- (2) to inspect and obtain samples of any pesticides or devices, packaged, labeled, and released for shipment, and samples of any containers or labeling for such pesticides or devices.

Before undertaking such inspection, the officers or employees must present to the owner, operator, or agent in charge of the establishment, appropriate credentials and a written statement as to the reason for the inspection, including a statement as to whether a violation of the law is suspected. If no violation is suspected, an alternate and sufficient reason shall be given in writing. Each such inspection shall be commenced and completed with reasonable promptness. If the officer or employee obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If an analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

(b) *WARRANTS.*—For purposes of enforcing the provisions of this Act and upon a showing to an officer or court of competent jurisdiction that there is reason to believe that the provisions of this Act have been violated, officers or employees duly designated by the Administrator are empowered to obtain and to execute warrants authorizing—

- (1) entry for the purpose of this section;
- (2) inspection and reproduction of all records showing the quantity, date of shipment, and the name of consignor and consignee of any illegal pesticide or device found in the establishment and in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the pesticide or device; and

(3) the seizure of any pesticide or device which is in violation of this Act.

(c) *ENFORCEMENT.*—

(1) *CERTIFICATION OF FACTS TO ATTORNEY GENERAL.*—The examination of pesticides or devices shall be made in the Environmental Protection Agency or elsewhere as the Administrator may designate for the purpose of determining from such examinations whether they comply with the requirements of this Act. If it shall appear from any such examination that they fail to comply with the requirements of this Act, the Administrator shall cause notice to be given to the person against whom criminal proceedings are contemplated. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings, and if in the opinion of the Administrator it appears that the provisions of this Act have been violated by such

person, then the Administrator shall certify the facts to the Attorney General, with a copy of the results of the analysis or the examination of such pesticide for the institution of a criminal proceeding pursuant to section 16, when the Administrator determines that such action will be sufficient to effectuate the purposes of this Act.

(2) *NOTICE NOT REQUIRED.*—The notice of contemplated proceedings and opportunity to present views set forth in this subsection are not prerequisites to the institution of any proceeding by the Attorney General.

(3) *WARNING NOTICES.*—Nothing in this Act shall be construed as requiring the Administrator to institute proceedings for prosecution of minor violations of this Act whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

SEC. 10. PROTECTION OF TRADE SECRETS AND OTHER INFORMATION.

(a) *IN GENERAL.*—In submitting data required by this Act, the applicant may (1) clearly mark any portions thereof which in his opinion are trade secrets or commercial or financial information, and (2) submit such marked material separately from other material required to be submitted under this Act.

(b) *DISCLOSURE.*—Notwithstanding any other provision of this Act, the Administrator shall not make public information which in his judgment contains or relates to trade secrets or commercial or financial information obtained from a person and privileged or confidential, except that, when necessary to carry out the provisions of this Act, information relating to formulas of products acquired by authorization of this Act may be revealed to any Federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the Administrator.

SEC. 11. STANDARDS APPLICABLE TO PESTICIDE APPLICATORS.

(a) *IN GENERAL.*—No regulations prescribed by the Administrator for carrying out the provisions of this Act shall require any private pesticide applicator to maintain any records or file any reports or other documents.

(b) *SEPARATE STANDARDS.*—When establishing or approving standards for licensing or certification, the Administrator shall establish separate standards for commercial and private applicators.

SEC. 12. UNLAWFUL ACTS.

(a) *IN GENERAL.*—

(1) *Except as provided by subsection (b), it shall be unlawful for any person in any State to distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person—*

(A) *any pesticide which is not registered under section 3;*

(B) *any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under section 3;*

(C) *any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under section 3;*

(D) any pesticide which has not been colored or discolored pursuant to the provisions of section 25(c)(5);

(E) any pesticide which is adulterated or misbranded; or

(F) any device which is misbranded.

(2) It shall be unlawful for any person—

(A) to detach, alter, deface, or destroy, in whole or in part, any labeling required under this Act;

(B) to refuse to keep any records required pursuant to section 8, or to refuse to allow the inspection of any records or establishment pursuant to section 8 or 9, or to refuse to allow an officer or employee of the Environmental Protection Agency to take a sample of any pesticide pursuant to section 9;

(C) to give a guaranty or undertaking provided for in subsection (b) which is false in any particular, except that a person who receives and relies upon a guaranty authorized under subsection (b) may give a guaranty to the same effect, which guaranty shall contain, in addition to his own name and address, the name and address of the person residing in the United States from whom he received the guaranty or undertaking;

(D) to use for his own advantage or to reveal, other than to the the Administrator, or officials or employees of the Environmental Protection Agency or other Federal executive agencies, or to the courts, or to physicians, pharmacists, and other qualified persons, needing such information for the performance of their duties, in accordance with such directions as the Administrator may prescribe, any information acquired by authority of this Act which is confidential under this Act;

(E) who is a registrant, wholesaler, dealer, retailer, or other distributor to advertise a product registered under this Act for restricted use without giving the classification of the product assigned to it under section 3;

(F) to make available for use, or to use, any registered pesticide classified for restricted use for some or all purposes other than in accordance with section 3(d) and any regulations thereunder;

(G) to use any registered pesticide in a manner inconsistent with its labeling;

(H) to use any pesticide which is under an experimental use permit contrary to the provisions of such permit;

(I) to violate any order issued under section 13;

(J) to violate any suspension order issued under section 6;

(K) to violate any cancellation of registration of a pesticide under section 6;

(L) who is a producer to violate any of the provisions of section 7;

(M) to knowingly falsify all or part of any application for registration, application for experimental use permit, any information submitted to the Administrator pursuant to section 7, any records required to be maintained pursuant to section 8, any report filed under this Act, or any information marked as confidential and submitted to the Administrator under any provision of this Act;

(N) who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by this Act; or

(O) to add any substance to, or take any substance from any pesticide in a manner that may defeat the purpose of this Act.

(b) *EXEMPTIONS.*—The penalties provided for a violation of paragraph (1) of subsection (a) shall not apply to—

(1) any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom he purchased and received in good faith the pesticide in the same unbroken package, to the effect that the pesticide was lawfully registered at the time of sale and delivery to him, and that it complies with the other requirements of this Act, and in such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provision of this Act;

(2) any carrier while lawfully shipping, transporting, or delivering for shipment any pesticide or device, if such carrier upon request of any officer or employee duly designated by the Administrator shall permit such officer or employee to copy all of its records concerning such pesticide or device;

(3) any public official while engaged in the performance of his official duties;

(4) any person using or possessing any pesticide as provided by an experimental use permit in effect with respect to such pesticide and such use or possession; or

(5) any person who ships a substance or mixture of substances being put through tests in which the purpose is only to determine its value for pesticide purposes or to determine its toxicity or other properties and from which the user does not expect to receive any benefit in pest control from its use.

SEC. 13. STOP SALE, USE, REMOVAL AND SEIZURE.

(a) *STOP SALE, ETC., ORDERS.*—Whenever any pesticide or device is found by the Administrator in any State and there is reason to believe on the basis of inspection or tests that such pesticide or device is in violation of any of the provisions of this Act, or that such pesticide or device has been or is intended to be distributed or sold in violation of any such provisions, or when the registration of the pesticide or device has been canceled by a final order or has been suspended, the Administrator may issue a written or printed "stop sale, use, or removal" order to any person who owns, controls, or has custody of such pesticide or device, and after receipt of such order no person shall sell, use, or remove the pesticide or device described in the order except in accordance with the provisions of the order.

(b) *SEIZURE.*—Any pesticide or device that is being transported or, having been transported, remains unsold or in original unbroken packages, or that is sold or offered for sale in any State, or that is imported from a foreign country, shall be liable to be proceeded against in any district court in the district where it is found and seized for confiscation by a process in rem for condemnation if—

(1) in the case of a pesticide—

(A) it is adulterated or misbranded;

(B) it is not registered pursuant to the provisions of section 3;

(C) its labeling fails to bear the information required by this Act;

(D) it is not colored or discolored and such coloring or discoloring is required under this Act; or

(E) any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration;

(2) in the case of a device, it is misbranded; or

(3) in the case of a pesticide or device, when used in accordance with the requirements imposed under this Act and as directed by the labeling, it nevertheless causes substantial adverse effects on the environment. In the case of a plant regulator, defoliant, or desiccant, used in accordance with the label claims and recommendations, physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when such effects are the purpose for which the plant regulator, defoliant, or desiccant was applied.

(c) **DISPOSITION AFTER CONDEMNATION.**—If the pesticide or device is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs, shall be paid into the Treasury of the United States, but the pesticide or device shall not be sold contrary to the provisions of this Act or the laws of the jurisdiction in which it is sold: Provided, That upon the payments of the costs of the condemnation proceedings and the execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be sold or otherwise disposed of contrary to the provisions of the Act or the laws of any State in which sold, the court may direct that such pesticide or device be delivered to the owner thereof. The proceedings of such condemnation cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

(d) **COURT COSTS, ETC.**—When a decree of condemnation is entered against the pesticide or device, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the pesticide or device.

SEC. 14. PENALTIES.

(a) **CIVIL PENALTIES.**—

(1) **IN GENERAL.**—Any registrant, commercial pesticide applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this Act may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

(2) **PRIVATE PESTICIDE APPLICATOR.**—Any private pesticide applicator who violates any provision of this Act subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense.

(3) **HEARING.**—No civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in the county, parish, or incorporated city of the residence of the person charged. In determining the amount of the penalty the Administrator shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation.

(4) **REFERENCES TO ATTORNEY GENERAL.**—In case of inability to collect such civil penalty or failure of any person to pay all, or such portion of such civil penalty as the Administrator may determine, the Administrator shall refer the matter to the Attorney General, who

shall recover such amount by action in the appropriate United States district court.

(b) **CRIMINAL PENALTIES.**—

(1) **IN GENERAL.**—Any registrant, commercial pesticide applicator, wholesaler, dealer, retailer, or other distributor who knowingly violates any provision of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than \$25,000, or imprisoned for not more than one year, or both.

(2) **PRIVATE PESTICIDE APPLICATOR.**—Any private pesticide applicator who knowingly violates any provision of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than \$1,000, or imprisoned for not more than 30 days, or both.

(3) **DISCLOSURE OF INFORMATION.**—Any person, who, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 3, shall be fined not more than \$10,000, or imprisoned for not more than three years, or both.

(4) **ACTS OF OFFICERS, AGENTS, ETC.**—When construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

SEC. 15. INDEMNITIES.

(a) **REQUIREMENT.**—If—

(1) the Administrator notifies a registrant that he has suspended the registration of a pesticide because such action is necessary to prevent an imminent hazard;

(2) the registration of the pesticide is canceled as a result of a final determination that the use of such pesticide will create an imminent hazard; and

(3) any person who owned any quantity of such pesticide immediately before the notice to the registrant under paragraph (1) suffered losses by reason of suspension or cancellation of the registration, the Administrator shall make an indemnity payment to such person.

(b) **AMOUNT OF PAYMENT.**—

(1) **IN GENERAL.**—The amount of the indemnity payment under subsection (a) to any person shall be determined on the basis of the cost of the pesticide owned by such person immediately before the notice to the registrant referred to in subsection (a) (1); except that in no event shall an indemnity payment to any person exceed the fair market value of the pesticide owned by such person immediately before the notice referred to in subsection (a) (1).

(2) **SPECIAL RULE.**—Notwithstanding any other provision of this Act, the Administrator may provide a reasonable time for use or other disposal of such pesticide. In determining the quantity of any pesticide for which indemnity shall be paid under this subsection, proper adjustment shall be made for any pesticide used or otherwise disposed of by such owner.

SEC. 16. ADMINISTRATIVE PROCEDURE; JUDICIAL REVIEW.

(a) **APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.**—Except as provided by subsection (b), subchapter II of chapter 5 of title 5 of the United States Code (sec. 551 and following, relating to administrative procedure) and chapter 7 of title 5 of the United States Code (sec. 701

and following, relating to judicial review) apply in respect of rules, rule making, orders, adjudication, licensing, sanctions, agency proceedings, and agency actions (as such terms are used in subchapter II of chapter 5 and in chapter 7 of title 5 of the United States Code).

(b) **JUDICIAL REVIEW.**—In the case of actual controversy as to the validity of any order issued by the Administrator following a public hearing, any party at interest may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has a place of business, within 60 days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator or any officer designated by him for that purpose, and thereupon the Administrator shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The court shall consider all evidence of record. The order of the Administrator shall be sustained if it is supported by substantial evidence when considered on the record as a whole. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all cases filed therein pursuant to this section.

(c) **JURISDICTION OF DISTRICT COURTS.**—The district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain violations of, this Act.

(d) **NOTICE OF JUDGMENTS.**—The Administrator shall, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of this Act.

SEC. 17. IMPORTS AND EXPORTS.

(a) **PESTICIDES AND DEVICES INTENDED FOR EXPORT.**—Notwithstanding any other provision of this Act, no pesticide or device shall be deemed in violation of this Act when intended solely for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser.

(b) **CANCELLATION NOTICES FURNISHED TO FOREIGN GOVERNMENTS.**—Whenever a cancellation of the registration of a pesticide becomes effective, the Administrator shall transmit through the State Department copies of each notice of cancellation of a registration of a pesticide to the governments of other countries and to appropriate international agencies.

(c) **IMPORTATION OF PESTICIDES AND DEVICES.**—The Secretary of the Treasury shall notify the Administrator of the arrival of pesticides and devices and shall deliver to the Administrator, upon his request, samples of pesticides or devices which are being imported into the United States, giving notice to the owner or consignee, who may appear before the Administrator and have the right to introduce testimony. If it appears from the examination of a sample that it is adulterated, or misbranded or otherwise violates the provisions set forth in this Act, or is otherwise injurious to health or the environment, the pesticide or device may be refused admission, and the Secretary of the Treasury shall refuse delivery

to the consignee and shall cause the destruction of any pesticide or device refused delivery which shall not be exported by the consignee within 90 days from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe: *Provided*, That the Secretary of the Treasury may deliver to the consignee such pesticide or device pending examination and decision in the matter on execution of bond for the amount of the full invoice value of such pesticide or device, together with the duty thereon, and on refusal to return such pesticide or device for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of said bond: And provided further, That all charges for storage, cartage, and labor on pesticide or device which are refused admission or delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee.

(d) **COOPERATION IN INTERNATIONAL EFFORTS.**—The Administrator shall, in cooperation with the Department of State and any other appropriate Federal agency, participate and cooperate in any international efforts to develop improved pesticide research and regulations.

(e) **REGULATIONS.**—The Secretary of the Treasury, in consultation with the Administrator, shall prescribe regulations for the enforcement of this section.

SEC. 18. EXEMPTION OF FEDERAL AGENCIES.

The President by executive order may exempt any Federal agency from any provision or all provisions of this Act if he determines that emergency conditions exist which require such exemption.

SEC. 19. DISPOSAL AND TRANSPORTATION.

(a) **PROCEDURES.**—The Administrator shall, after consultation with other interested Federal agencies, establish procedures and regulations for the disposal or storage of packages and containers of pesticides and for disposal or storage of excess amounts of such pesticides, and accept at convenient locations for safe disposal a pesticide the registration of which is canceled under section 6 (c) if requested by the owner of the pesticide.

(b) **ADVICE TO SECRETARY OF TRANSPORTATION.**—The Administrator shall provide advice and assistance to the Secretary of Transportation with respect to his functions relating to the transportation of hazardous materials under the Department of Transportation Act (49 U.S.C. 1657) the Transportation of Explosives Act (18 U.S.C. 831-835), the Federal Aviation Act of 1958 (49 U.S.C. 1421-1430, 1472 H), and the Hazardous Cargo Act (46 U.S.C. 170, 375, 416).

SEC. 20. RESEARCH AND MONITORING.

(a) **RESEARCH.**—The Administrator shall undertake research, including research by grant or contract with other Federal agencies, universities, or others as may be necessary to carry out the purposes of this Act, and he shall give priority to research to develop biologically integrated alternatives for pest control. The Administrator shall also take care to insure that such research does not duplicate research being undertaken by any other Federal agency.

(b) **NATIONAL MONITORING PLAN.**—The Administrator shall formulate and periodically revise, in cooperation with other Federal, State, or local agencies, a national plan for monitoring pesticides.

(c) **MONITORING.**—The Administrator shall undertake such monitoring activities, including but not limited to monitoring in air, soil, water, man,

plants, and animals, as may be necessary for the implementation of this Act and of the national pesticide monitoring plan. Such activities shall be carried out in cooperation with other Federal, State, and local agencies.

SEC. 21. SOLICITATION OF PUBLIC COMMENTS.

In addition to any other authority relating to public hearings and solicitation of views, in connection with the suspension or cancellation of a pesticide registration or any other actions authorized under this Act, the Administrator may, at his discretion, solicit the views of all interested persons, either orally or in writing, and seek such advice from scientists, farmers, farm organizations, and other qualified persons as he deems proper.

SEC. 22. DELEGATION AND COOPERATION.

(a) *DELEGATION*.—All authority vested in the Administrator by virtue of the provisions of this Act may with like force and effect be executed by such employees of the Environmental Protection Agency as the Administrator may designate for the purpose.

(b) *COOPERATION*.—The Administrator shall cooperate with the Department of Agriculture, any other Federal agency, and any appropriate agency of any State or any political subdivision thereof, in carrying out the provisions of this Act, and in securing uniformity of regulations.

SEC. 23. STATE COOPERATION, AID, AND TRAINING.

(a) *COOPERATIVE AGREEMENTS*.—The Administrator is authorized to enter into cooperative agreements with States—

(1) to delegate to any State the authority to cooperate in the enforcement of the Act through the use of its personnel or facilities, to train personnel of the State to cooperate in the enforcement of this Act, and to assist States in implementing cooperative enforcement programs through grants-in-aid; and

(2) to assist State agencies in developing and administering State programs for training and certification of pesticide applicators consistent with the standards which he prescribes.

(b) *CONTRACTS FOR TRAINING*.—In addition, the Administrator is authorized to enter into contracts with Federal or State agencies for the purpose of encouraging the training of certified pesticide applicators.

SEC. 24. AUTHORITY OF STATES.

(a) A State may regulate the sale or use of any pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this Act or restrict by license or permit the use of a pesticide registered for general use;

(b) such State shall not impose or continue in effect any requirements for labeling and packaging in addition to or different from those required pursuant to this Act; and

(c) a State may assist the Administrator in the registration of pesticides formulated for intrastate distribution to meet specific local needs if that State is certified by the Administrator as capable of exercising adequate controls.

SEC. 25. AUTHORITY OF ADMINISTRATOR.

(a) *REGULATIONS*.—The Administrator is authorized to prescribe regulations to carry out the provisions of this Act. Such regulations shall take into account the difference in concept and usage between various classes of pesticides.

(b) *EXEMPTION OF PESTICIDES.*—The Administrator may exempt from the requirements of this Act by regulation any pesticide which he determines either (1) to be adequately regulated by another Federal agency, or (2) to be of a character which is unnecessary to be subject to this Act in order to carry out the purposes of this Act.

(c) *OTHER AUTHORITY.*—The Administrator, after notice and opportunity for hearing, is authorized—

(1) to declare a pest any form of plant or animal life (other than man and other than bacteria, virus, and other micro-organisms on or in living man or other living animals) which is injurious to health or the environment;

(2) to determine any pesticide which contains any substance or substances in quantities highly toxic to man;

(3) to establish standards (which shall be consistent with those established under the authority of the Poison Prevention Packaging Act (Public Law 91-601)) with respect to the package, container, or wrapping in which a pesticide or device is enclosed for use or consumption, in order to protect children and adults from serious injury or illness resulting from accidental ingestion or contact with pesticides or devices regulated by this Act as well as to accomplish the other purposes of this Act;

(4) to specify that any class of devices shall be subject to this Act if he determines that the application of this Act in respect of such class is necessary to effectuate the purposes of this Act;

(5) to prescribe regulations requiring any pesticide to be colored or discolored if he determines that such requirement is feasible and is necessary for the protection of health and the environment; and

(6) to determine and establish suitable names to be used in the ingredient statement.

SEC. 26. SEVERABILITY.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without regard to the invalid provision or application, and to this end the provisions of this Act are severable.

SEC. 27. AUTHORIZATION FOR APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for each fiscal year ending June 30, 1972, June 30, 1973, and June 30, 1974. The amounts authorized to be appropriated for any fiscal year ending after June 30, 1974, shall be the sums hereafter provided by law.

FEDERAL HAZARDOUS SUBSTANCES ACT

* * * * *

DEFINITIONS

SEC. 2. For the purposes of this Act—

(a) * * *

* * * * *

(f) The term "hazardous substance" means:

1. * * *

* * * * *

2. The term "hazardous substance" shall not apply to [economic poisons] *pesticides* subject to the Federal Insecticide, Fungicide, and Rodenticide Act, nor to foods, drugs, and cosmetics subject to the Federal Food, Drug, and Cosmetic Act, nor to substances intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house, but such term shall apply to any article which is not itself [an economic poison] *a pesticide* within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act but which is a hazardous substance within the meaning of subparagraph 1 of this paragraph by reason of bearing or containing such [an economic poison] *a pesticide*.

* * * * *

POISON PREVENTION PACKAGING ACT

* * * * *

SEC. 2. For the purpose of this Act—

(1) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(2) The term "household substance" means any substance which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household and which is—

(A) a hazardous substance as that term is defined in section 2(f) of the Federal Hazardous Substances Act (15 U.S.C. 1261(f));

(B) [an economic poison] *a pesticide* as that term is defined in section 2a of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135(a));

* * * * *

FEDERAL FOOD, DRUG, AND COSMETIC ACT

* * * * *

CHAPTER II—DEFINITIONS

SEC. 201. For the purposes of this Act—

(a) * * *

* * * * *

(q) The term "pesticide chemical" means any substance which, alone, in chemical combination or in formulation with one or more other substances, is [an "economic poison"] *a "pesticide"* within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C., secs. 135–135k) as now in force or as hereafter amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

* * * * *

CHAPTER IV—FOOD

TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL
COMMODITIES

SEC. 408. (a) * * *

(d)(1) Any person who has registered, or who has submitted an application for the registration of, [an economic poison] a *pesticide* under the Federal Insecticide, Fungicide, and Rodenticide Act may file with the Secretary of Health, Education, and Welfare, a petition proposing the issuance of a regulation establishing a tolerance for a pesticide chemical which constitutes, or is an ingredient of such [economic poison] *pesticide*, or exempting the pesticide chemical from the requirement of a tolerance. The petition shall contain data showing—

(A) the name, chemical identity, and composition of the pesticide chemical; * * *

(e) The Secretary may at any time, upon his own initiative or upon the request of any interested person, propose the issuance of a regulation establishing a tolerance for a pesticide chemical or exempting it from the necessity of a tolerance. Thirty days after publication of such a proposal, the Secretary may by order publish a regulation based upon the proposal which shall become effective upon publication unless within such thirty-day period a person who has registered, or who has submitted an application for the registration of, [an economic poison] a *pesticide* under the Federal Insecticide, Fungicide, and Rodenticide Act containing the pesticide chemical named in the proposal, requests that the proposal be referred to an advisory committee. In the event of such a request, the Secretary shall forthwith submit the proposal and other relevant data before him to an advisory committee to be appointed in accordance with subsection (g) of this section. As soon as practicable after such referral, but not later than sixty days thereafter, unless extended as hereinafter provided, the committee shall, after independent study of the data submitted to it by the Secretary and other data before it, certify to the Secretary a report and recommendations on the proposal together with all underlying data and a statement of the reasons or basis for the recommendations. The sixty-day period provided for herein may be extended by the advisory committee for an additional thirty days if the advisory committee deems this necessary. Within thirty days after such certification, the Secretary may, after giving due consideration to all data before him, including such report, recommendations, underlying data and statement, by order publish a regulation establishing a tolerance for the pesticide chemical named in the proposal or exempting it from the necessity of a tolerance which shall become effective upon publication. Regulations issued under this subsection shall upon publication be subject to paragraph (5) or subsection (d).

(l) The Secretary of Agriculture, upon request of any person who has registered, or who has submitted an application for the registra-

tion of, [an economic poison] a *pesticide* under the Federal Insecticide, Fungicide, and Rodenticide Act, and whose request is accompanied by a copy of a petition filed by such person under subsection (d)(1) with respect to a pesticide chemical which constitutes, or is an ingredient of, such [economic poison] *pesticide*, shall, within thirty days or within sixty days if upon notice prior to the termination of such thirty days the Secretary deems it necessary to postpone action for such period, on the basis of data before him, either—

(1) certify to the Secretary of Health, Education, and Welfare that such pesticide chemical is useful for the purpose for which a tolerance or exemption is sought; or

(2) notify the person requesting the certification of his proposal to certify that the pesticide chemical does not appear to be useful for the purpose for which a tolerance or exemption is sought, or appears to be useful for only some of the purposes for which a tolerance or exemption is sought.

In the event that the Secretary of Agriculture takes the action described in clause (2) of the preceding sentence, the person requesting the certification, within one week after receiving the proposed certification, may either (A) request the Secretary of Agriculture to certify to the Secretary of Health, Education, and Welfare on the basis of the proposed certification; (B) request a hearing on the proposed certification or the parts thereof objected to; or (C) request both such certification and such hearing. If no such action is taken, the Secretary may by order make the certification as proposed. In the event that the action described in clause (A) or (C) taken, the Secretary shall by order make the certification as proposed with respect to such parts thereof as are requested. In the event a hearing is requested, the Secretary of Agriculture shall provide opportunity for a prompt hearing. The certification of the Secretary of Agriculture as the result of such hearing shall be made by order and shall be based only on substantial evidence of record at the hearing and shall set forth detailed findings of fact. In no event shall the time elapsing between the making of a request for a certification under this subsection and final certification by the Secretary of Agriculture exceed one hundred and sixty days. The Secretary shall submit to the Secretary of Health, Education, and Welfare with any certification of usefulness under this subsection an opinion, based on the data before him, whether the tolerance or exemption proposed by the petitioner reasonably reflects the amount of residue likely to result when the pesticide chemical is used in the manner proposed for the purpose for which the certification is made. The Secretary of Agriculture, after due notice and opportunity for public hearing, is authorized to promulgate rules and regulations for carrying out the provisions of this subsection.

* * * * *

ADDITIONAL VIEWS OF CONGRESSMAN THOMAS S. FOLEY

Many of the amendments to the FIFRA which the committee has reported in H.R. 10729 are needed and salutary. In my judgment, however, the bill is so defective in several significant aspects that I find it difficult to support the proposed legislation in its present form.

Indemnities, Section 15, page 47—A key element of the committee bill to which I object is a far-reaching extension of indemnities to manufacturers, retailers, and users for the cost of pesticides and devices when registrations are suspended or cancelled. In addition to the burden of paying indemnity holders of materials on which registration is suspended or cancelled, the Administrator is required to arrange for the disposal of the material at the option of the holder.

I do not believe that it is wise to undertake so broad and far-reaching a policy of indemnity for the imposition of government prohibitions on hazardous substances. I find it particularly difficult to support this section of the bill when the committee rejected what seemed to me to be an eminently reasonable limitation on the amount of pesticides or devices indemnity might be claimed; namely, no more than a 12-month supply.

Restriction on Research Data, Section 3(c)(I)(d) page 17 provides that data support of an application shall not, without permission of the applicant, be considered by the Administrator in support of any other application for registration. The effect of this provision is to enable an applicant to restrict the use of research and other data provided by him to the Administrator as a means of slowing or blocking subsequent registrations of other products. It is argued by the proponents of this section that some reward should be given to research investment in order to stimulate and encourage such investment. While I do not quarrel with the need to maintain continued research in pesticides and other agricultural chemicals, it seems to me that this is a clumsy, inefficient, and expensive way in which to provide such stimulation. The Administrator, in effect, is asked to ignore perhaps clearly defined and established data and, at the very least, necessitate an expensive re-invention of the wheel through duplicative research or data gathering efforts which are totally wasteful and otherwise unnecessary. I am concerned that this technique may be a precedent for other efforts to establish quasi-patents on licenses for manufactured products when Congress has decided not to grant more direct protection.

Judicial Review, Section 16(b)—I agree with the objection of my colleague, John Dow, that the committee has undoubtedly sought to restrict the access of parties to judicial review following a public hearing on the refusal to register, or the cancellation or suspension of pesticides or devices. It seems to me this is directed against the intervention of environmental groups or public interest parties in the judicial review process. Considering the obvious national interest in appropriate regulation of pesticides and materials potentially hazard-

ous to man or to the environment, I see no justification for this effort to so restrict access to judicial review.

Record-keeping, Section 11(a)—In an overly enthusiastic effort to avoid burdensome restrictions on farmers, the committee adopted an amendment which prohibits the Administrator from requiring the maintenance or filing of records by private pesticide users, even when restricted use pesticides are involved. This amendment is typical of many adopted by the committee circumscribing the authority of the Administrator so severely that efficient and effective administration of the Act may be extraordinarily difficult. I fear also that if the Administrator is barred from imposing even the most minimal record-keeping requirements on private pesticide users, it will be more difficult to obtain registration in some cases, or the conditions under which restricted use of pesticides or devices may be applied will be controlled by regulation in other and more burdensome ways. Despite the committee's good intentions toward farmers, I feel that it will be the farmer users who suffer if this provision remains in the bill.

Authority of States—Section 24—The committee accepted an amendment which authorizes the States to regulate the sale or use of any pesticide or device within the State if such State regulation does not permit the sale or use prohibited by the Act. The Amendment also forbids the State to "restrict by license or permit the use of a pesticide registered for general use, . . ."

Pesticides are to be classified as "restricted use" under this bill if they are acutely toxic, either dermally or by inhalation, or if they may cause substantial adverse effects on the environment. For over 25 year, States have restricted "general use" pesticides which do not fit the criteria of the two hazards listed above. These restrictions relate to local conditions such as climate, cropping practices, population density, soils, and pest populations. Their purpose is to protect susceptible crops and ornamentals, pollinating insects, animals, and people.

The application of this amendment will apparently preempt the authority of States to restrict otherwise "general use" pesticides for this purpose. This amendment will do violence to many effective State pesticide programs and restrict the ability of States to apply reasonable restrictions in meeting particular needs created by local conditions. It sharply restricts needed flexibility of administration in cooperation between the Federal and State programs and serves no valid purpose whatsoever.

There are other aspects of this bill with which I find myself in disagreement. While I recognize the long and difficult task that the committee undertook in updating Federal law in this critical and complex area, I believe that there is an urgent need to correct these and other deficiencies of the bill if an efficient and workable program is to be developed which can balance the needs of the economy with the essential protection of our natural environment. I hope that in consideration of the bill by the House corrective amendments will be adopted.

THOMAS S. FOLEY,
Member of Congress.

ADDITIONAL VIEWS OF HON. JOHN G. DOW

INTRODUCTION

The question that must be asked by the reviewer of the amendments to the Federal Insecticide, Fungicide, and Rodenticide Act is whether the changes in H.R. 10729 create a reasonable and effective law. In the months of testimony before the Agriculture Committee on pesticides many points of view were heard. Yet we did not have the opportunity to listen to more than a handful of entomologists tell us that the use of pesticides may destroy the ecological balance in nature, that plants themselves become weakened by successive applications, and that sprays used in our agricultural fields are dangerous to life. We did not hear, as the Government Operations Committee did, that some authorities put the number of pesticide poisonings to people in the U.S. at 50,000 annually.

A report issued on Monday, September 20th, by a group of scientists chosen by the Environmental Protection Agency said that DDT presents "a substantial threat to the quality of the human environment through widespread damage to some nontarget organisms."

This bill is the Committee's response to the recognized need both to register the pesticides and to restrict or control their use. In my view H.R. 10729 (1) fails to establish a balanced approach to the problem of pesticides, (2) limits disclosure of information about the pesticides, and (3) requires that the EPA, rather than the manufacturer, assume the burden of proving the pesticide to have a "substantial adverse effect", Sec. 3 Registration of Pesticides (c)(5)(C) p. 19.

The present Law, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), either allows or disallows the pesticide sought to be registered. FIFRA's strength lies in its approach which requires the manufacturer to label his product with directions for use and with a warning statement. Under FIFRA the Administrator must be assured that the article warrants the manufacturer's proposed claims based on the statement submitted by the applicant. If he is not satisfied, the Administrator denies registration. When he finds that his action is necessary to prevent an imminent hazard to the public, the Administrator may suspend the registration of the pesticide. The Administrator is not unduly limited in his ability to disclose information surrounding the registration of the pesticide, but is properly constrained from releasing data on the business records and documents which he may require under the Act (FIFRA).

H.R. 10729 substantially weakens the clear-cut approach incorporated in present law without providing adequate safeguards. In its reluctance to treat pesticides in a manner similar to prescription drugs, which are controlled over the counter, the bill fails to set up adequate mechanisms for registration and use, relying on a loosely drawn procedure for licensing applicators.

ANALYSIS

H.R. 10729, in my view, effectively reduces the control of the Environmental Protection Agency (EPA) through several devices which must be separately analyzed.

1. Information submitted by the applicant is subject to restrictions imposed by the applicant himself.

Under Sec. 3 *Registration of Pesticides*. (c)(1)(D) p. 17, "data submitted in support of an application shall not, *without permission of the applicant* (emphasis added), be considered by the Administrator in support of any other application for registration."

Under sec. 10. *Protection of Trade Sections and Other Information*, p. 36, concerning application form, the applicant may "clearly mark any portions thereof which in his opinion are trade secrets or commercial or financial information."

As a result of these sections the applicant is in a position to make the original classification on the confidentiality of the information. The EPA Administrator's decision on which data may be disclosed is in effect made for him by the applicant.

While it can be argued that the Administrator under the following sub-section on disclosure, sec. 10(6) p. 36, may exercise his "judgment" on the release of information, the fact is that the applicant's power to classify is sufficiently strong to limit the flow of information surrounding the application to a mere trickle and successfully inhibit access to data which is not subject to patent laws and which should be available to the public.

2. The burden of proving that a pesticide represents a substantial environmental impact has been shifted to the Administrator.

The registration procedure requires a statement of (A) the name and address; (B) the name of the pesticide; (C) a complete copy of the labeling, statement of all claims, directions for use; (D) *if requested* (emphasis added), a full description of tests; (E) the complete formula; and (F) a request that the pesticide be classified for general or restricted use. This procedure fails to sustain the burden of proof which should rest fully on the applicant to prove that the pesticide will perform without substantial adverse effect on the environment. The placing of this responsibility on the Administrator under sec. 3(c)(5), the approval mechanism on p. 19 of the bill, gives the EPA the burden of finding that the product sought to be registered is environmentally unsound.

The shoe should be on the other foot. The responsibility for the protection of our environment is as much a burden of the manufacturer as it is a Federal function of the EPA. Until the requirements are spelled out in the registration process the burden will not rest on both parties as it must when such a critical factor as our environmental health is at stake.

3. Judicial review following a public hearing is narrowly limited to "any party at interest."

The language "any party at interest," sec. 16, Administrative Review; Suspension (6), p. 49, was changed during committee proceedings from the earlier language which read: "any person adversely

affected." This is an attempt to narrow the scope of review to registration applicants and preclude the intervention of outside parties who wish to carry the burden of proving that they are adversely affected. To attempt by statute to eliminate this avenue for a class action after the case of *Environmental Defense Fund v. Hardin*, 428 F. 2d 1093, should not be allowed by the House when this bill is considered.

Nowhere in the bill are there provisions which would allow any party the opportunity to request public hearings unless they are applicants for registration of pesticides. This effectively excludes such parties not only from public hearings but also court appeals.

4. Judicial Review of orders of suspensions may be maintained simultaneously with any administrative review.

Under sec. 6. *Administrative Review; Suspension*, (c)(3) p. 28, the district court is empowered to take immediate review of an order of suspension issued by the Administrator. The court action is limited under the language of the bill starting on line 13, "solely to determine whether the order of suspension was arbitrary, capricious or an abuse of discretion . . ." I submit that the court, which is given the power to move at the same time that the administrative review is proceeding will be involved in substantive issues before these issues have been fully formulated by the administrative review. The provision would run counter to the established precedent of administrative law which is that judicial action follows after administrative remedies have been exhausted. This provision well exemplifies a strong tendency in H.R. 10729 to place many procedural hurdles in the way of the EPA Administrator during the course of his regulatory functions.

5. The bill implies that the benefits from the use of a pesticide can offset its injuriousness.

The definition of "protect health and environment" under Sec. 2. Definitions, p. 15 is particularly strained when it seeks "to take into account the public interest, including benefits from the use of the pesticide."

In another instance, under sec. 3, *Registration of Pesticides*, (c)(5), p. 19, the bill provides that the Administrator shall *not make any lack of essentiality a criterion for denying registration of any pesticide*. (Emphasis added.) This raises questions about the purpose of pesticides proposed and also about the purpose of the bill itself.

The foregoing two phrases taken together cannot be construed in any way to establish a balanced system of control. They are not in keeping with the National Environmental Policy Act of 1969, Public Law 91-190. In that act Congress established the policy that the widest range of beneficial uses of the environment without degradation, risk to health or safety together must be balanced with population and resource use. It did not suggest, as the new bill before us does, that questionable aspects of pesticides are to be given consequence.

I commend the committee for sincerely assuming the difficult task of weighing the various interests who came before it during consideration of this legislation. In this instance, however, there is no public interest to be served by requiring the Administrator to recognize negative factors in the balance of control and disregard a basic concept, essentiality, in his decision on registration.

6. Additional major areas which are of questionable value when compared with the present law (FIFRA) are noted below.

(a) Sec. 15. *Indemnities*, p. 47. The Administrator is required to indemnify registrants whose registrations are suspended or canceled because of action taken to prevent imminent hazards. The section also applies to persons owning any quantity of the pesticide. The amount of payment is not limited in time and is based on cost of the pesticide before notice to the registrant.

I fail to comprehend any basis for compensating any registrant whose product is determined to create an "imminent hazard." I can only relate to my earlier argument that the burden of proof is improperly resting on the Administrator as this bill is written. Any compensation mechanism which takes care of these producers who did not anticipate the environmental impact of their pesticide is insurance for their failure to maintain up-to-date research, and should be eliminated.

(b) Sec. 6(d). *Public Hearings and Scientific Review*, p. 28. After much discussion in the committee the decision was reached to require all relevant questions of scientific fact arising during a public hearing to be referred to a committee of the National Academy of Sciences. This mechanism is to be distinguished from current practice under FIFRA whereby the Administrator chooses a panel of experts from a list submitted to him by the National Academy of Sciences. This adherence to the Academy, which is made exclusive in the new bill, has been the subject of criticism by environmentalists who sense in it an excessive institutional restraint.

The new section improves the present procedure somewhat by requiring the scientific review to be part and parcel of the hearing record. However, it may still be used as a delaying tactic since it prevents implementation of the Administrator's order unless an "imminent hazard" is involved.

(c) Sec. 18. *Exemption of Federal Agencies*, p. 52. This section would enable the President to exempt Federal Agencies for any or all of the provisions of the act if he declared that emergency conditions exist. FIFRA, the present law, has no such exemption.

The vagueness of the language conceivably permits controversial emergency situations to be dealt with in spite of their critical effect on the environment. Such occasions have arisen this year. In New York State aerial spraying programs with the insecticide carbaryl or Sevin were extensively carried out this spring without prior submission of a final environmental impact statement to the Council on Environmental Quality as required by Public Law 91-190. What constituted an emergency for some in this instance was a serious evasion of the provisions of Public Law 91-190 for others. An insecticide was indiscriminately sprayed in spite of substantial evidence that the insecticide had serious ecological effects. Sec. 18 is a loophole with every potential for repeated instances of the Sevin experience. At the present time, the President is empowered by law to act in national emergencies. This provision, which opens new and possibly unnecessary avenues, should be deleted.

I am prepared to offer amendments to the bill, H.R. 10729, based on certain of these comments. I cannot support the bill as it stands. It is essentially weaker than the present law and not nearly as protective of our environment as such a bill ought to be in this enlightened year of 1971.

JOHN G. DOW,
Member of Congress.

ADDITIONAL VIEWS OF CONGRESSMAN JOHN MELCHER

H.R. 10729, the Federal Insecticide Act of 1971, fails to close a loophole where chemicals on imported foodstuffs are used that may have harmful effects on consumers. We depend on domestic food producers, or livestock, not to use chemicals on their products that science has found to be injurious to the health of consumers. H.R. 10729 continues this requirement for domestic producers, but fails to apply the same safeguard to food products that are imported into the U.S.

With the everwidening use of chemicals in food production, there is increasing need to protect the wholesomeness of dairy, fruit, vegetable, cereal, or meat products by avoiding application of chemicals that would leave residues injurious to health. It is fraudulent to tolerate a double standard between imported and domestic food supplies. Chemical pesticides or herbicides banned for use on domestic food products because their residue would be injurious to consumers, should not be allowed on imported foodstuffs. In most cases, there is no way for the consumer to know which products are imported and which are of domestic origin. But in neither case should we take the chance with the health of our consuming public.

Testimony before the Committee from Food and Drug Administration officials outlining surveillance for harmful residues was not reassuring. The testing of chemical residues on ready-to-eat meats, poultry, and fish was haphazard and raised doubts as to any effective control on residues on imported foods. As a result, the Committee approved a section in the bill requiring producers of imported foods to follow the same procedures as we do in this country to avoid contamination with toxic chemicals. (A copy of this section follows my views.) The State Department objected saying it would interfere with good relations with countries that export foods to us. The Department of Agriculture objected, stating it would interfere with agricultural trade. The Environmental Protection Agency, in sympathy with these two Cabinet Departments, also objected. But obviously the health of our consumers should be paramount to the speculation conjured by the two Departments which have little basis for their arguments. Their pale objections based on anemic judgments should not be allowed to jeopardize the health of American consumers. Exporting countries are interested in the health of their own consumers as well as the health of their customers abroad; and when our scientists determine that a chemical leaves a harmful residue in foodstuffs, this fact should be noted and observed by all countries. It is of mutual beneficial interest which is on a level higher than mundane trade policy or profits.

Nevertheless, the pressure applied by the Administration through the State Department and the Department of Agriculture caused the deletion from the bill of what I believe to be a very important section to apply the same standards to imported food products that we apply to domestic supplies.

The argument is made that consumers have adequate protection through the surveillance of the Food and Drug Administration and the Department of Agriculture. That is not the case. Very little sampling is done. I am including at the end of my views tables provided by the Food and Drug Administration and by the Department of Agriculture. Examination of their tables prompts the following conclusions:

(1) In the case of meat, fish and poultry, residues for only 13 pesticide compounds in a very few samples are examined. These are pesticides available in this country, but banned for use in production of these foods or allowed only with strict limitations found to be safe.

(2) The incidence percent and the average parts per million are greater in the imported food samples than from the domestic products. Improvement in the presence and amounts of residues found in domestic food products as compared to imported food products in the years 1967, 1968 and 1969 was much better on the domestic side as compared to the imported products. This argues strongly for the banning or limiting uses of the objectionable pesticides as has been done in the U.S. for our domestic producers with a like extension to all producers in other countries who wish to sell products in this country.

(3) Residue sampling is decreasing. The bulwark of consumer protection continues to be reliance on producer compliance not to use banned or limited use chemicals. Even if sampling were increased a hundredfold, it would still only be spot checks which without compliance by producers on banned chemicals offer little assurance to consumers that an adequate job was being done to guard against harmful residues.

(4) There was very little sampling done in 1970, and rejections of shipments of imported meat because of residues in excess of tolerance levels only totaled 23 for the year. However, imports showed the incidence of benzene hexachloride, DDT, dieldrin, and heptachlor epoxide residues are all on the increase indicating a much more extensive use by the producers of the countries of the imported meat. These chemicals are all banned or require strict limitations on use for livestock in this country.

The only valid conclusion in the face of these facts is that H.R. 10729 can only assure consumers adequate protection from harmful residues from pesticides or herbicides when every means is taken to prevent the use of these chemicals on food products consumed by our people. Not to apply these same standards based on scientific evaluations to imported foods may give us, as our State and Agriculture Departments have implied, an open door trade policy, but it is an open door invitation to abuse imported food supplies inviting residues that may harm the health of untold numbers of our people. There can be no justification in taking that chance. Decisions to limit chemicals used by our domestic producers are not decisions lightly made but are made after long and careful study and evaluation. The results should not be ignored by any producers anywhere in the world. Their health and our health is at stake. If the House does not include a section such as Section 17(e) in the Committee print or similar protection, H.R. 10729 has a serious, damaging flaw.

JOHN MELCHER,
Member of Congress.

(Committee Print No. 3, dated July 13, 1971, was used by the committee in the preparation of H.R. 10729. Section 17(e) of Committee Print No. 3 is as follows:)

“(e) IMPORTATION OF AGRICULTURAL PRODUCTS.—Notwithstanding any other provision of law, whenever the use of any pesticide in connection with the producing, processing, or handling of any agricultural commodity is prohibited or limited under any Federal statute, the President shall prohibit importation of such commodity from any country if he determines that—

“(1) such country does not have at least equal restrictions with respect to the use of such pesticide, and

“(2) such commodity is produced in substantial quantities in the continental United States.

The provisions (including penalties and forfeitures) of section 545 of title 18, United States Code, shall apply in enforcing the provisions of this subsection. The President may prescribe rules and regulations to carry out the purposes of this subsection, including but not limited to, provisions for the deferral of the effective date thereof with respect to particular pesticides or agricultural commodities for not more than three years.

PESTICIDE RESIDUES IN MEATS (FAT BASIS) FISCAL YEARS 1965-69 (BEEF, PORK, ETC.)

[Total diet samples—ready-to-eat food, meat, fish, and poultry (roast beef, ground beef, pork chops, chicken, fish fillets, eggs, frankfurters, etc.)]

Specific compound	Domestic samples, 12,146		Import samples, ¹ 3,674		Total diet samples (meat, fish, and poultry), 134 composites	
	Incidence percent	Average p.p.m.	Incidence percent	Average p.p.m.	Incidence percent	Average p.p.m.
DDT ²	75.4	0.33	83.9	0.41	88.1	0.182
DDE ²					92.5	.168
TDE ²					80.6	.092
Dieldrin.....	31.3	.05	46.7	.10	61.9	.026
Heptachlor epoxide ³	⁴ 21.6	.02	10.2	.01	53.7	.016
Heptachlor ³	9.6	.01	1.1	(⁵)	3.0	(⁶)
Lindane.....	6.6	.01	12.4	.01	19.4	.006
BHC.....	⁷ 20.2	.02	⁷ 63.2	.15	50.0	.018
Aldrin.....	.1	(⁵)	⁷ 1.4	(⁵)	.7	(⁶)
Endrin.....	.4	(⁵)	1.0	(⁵)	1.5	(⁶)
Methoxychlor.....	1.8	.01	.6	(⁵)		
Toxaphene.....	1.4	.01	.1	(⁵)	1.5	.004
MCP.....	⁸ 11.8	.02	⁴ 45.1	.10	.7	(⁶)

¹ Import samples for fiscal years 1967, 1968, and 1969 only.

² DDT includes DDE and TDE.

³ Heptachlor includes heptachlor epoxide except fiscal year 1967 (domestic samples only).

⁴ Fiscal year 1967 only, 3,098 domestic samples, 1,901 import samples.

⁵ Less than 0.005 p.p.m.

⁶ Less than 0.001 p.p.m.

⁷ Fiscal year 1968 and 1969 only, 4,012 domestic samples and 1,773 import samples.

⁸ Fiscal year 1965, 1966, and 1967 only, 8,134 domestic samples.

Source: Food and Drug Administration.

NUMBER OF SAMPLES

Range (parts per million)	Domestic						Imported			
	1965	1966	1967	1968	1969	Total	1967	1968	1969	Total
Methyl chlorophenoxy acetic acid (MCP):										
None found.....	3,200	1,614	2,357	0	0	7,171	1,044	0	0	1,044
Trace to 0.10.....	51	134	621	0	0	806	564	0	0	564
0.11 to 0.50.....	1	35	90	0	0	126	214	0	0	214
0.51 to 1.00.....	0	1	15	0	0	16	52	0	0	52
1.01 to 1.50.....	0	0	6	0	0	6	14	0	0	14
1.51 to 2.00.....	0	0	2	0	0	2	5	0	0	5
2.01 to 3.00.....	0	0	3	0	0	3	3	0	0	3
Above 3.00.....	0	0	4	0	0	4	5	0	0	5
Total.....	3,252	1,784	3,098	0	0	8,134	1,901	0	0	1,901

NUMBER OF SAMPLES—Continued

Range PPM	Domestic						Imported			
	1965	1966	1967	1968	1969	Total	1968	1969	Total	
Aldrin:										
None found	3,252	1,783	3,098	2,709	1,298	2,140	1,264	484	1,748	
Trace to 0.10	0	0	0	3	1	4	9	13	22	
0.11 to 0.50	0	0	0	1	0	1	1	2	3	
0.51 to 1.00	0	1	0	0	0	1	0	0	0	
1.01 to 1.50	0	0	0	0	0	0	0	0	0	
1.51 to 2.00	0	0	0	0	0	0	0	0	0	
2.01 to 3.00	0	0	0	0	0	0	0	0	0	
Above 3.00	0	0	0	0	0	0	0	0	0	
Total	3,252	1,784	3,098	2,713	1,299	2,146	1,274	499	1,773	
Benzene hexachloride (BHC):										
None found				2,070	1,130	3,200	446	206	652	
Trace to 0.10				576	146	722	370	178	548	
0.11 to 0.50				49	17	66	382	98	480	
0.51 to 1.00				10	3	13	60	14	74	
1.01 to 1.50				4	1	5	11	3	14	
1.51 to 2.00				2	0	2	0	0	0	
2.01 to 3.00				2	1	3	2	0	2	
Above 3.00				0	1	1	3	0	3	
Total				2,713	1,299	4,012	1,274	499	1,773	
Range PPM	Domestic						Imported			
	1965	1966	1967	1968	1969	Total	1967	1968	1969	Total
DDT:										
None found	1,148	568	644	472	161	2,993	300	216	76	592
Trace to 0.10	1,245	513	925	728	383	3,794	522	365	129	1,016
0.11 to 0.50	435	386	1,106	1,080	572	3,579	638	499	201	1,338
0.51 to 1.00	203	129	241	253	103	929	236	113	45	394
1.01 to 1.50	67	59	76	60	43	305	78	30	24	132
1.51 to 2.00	70	38	25	43	13	189	39	22	6	67
2.01 to 3.00	41	42	38	37	20	178	50	16	6	72
Above 3.00	43	49	43	40	4	179	38	13	12	63
Total	3,252	1,784	3,098	2,713	1,299	12,146	1,901	1,274	499	3,674
Dieldrin:										
None found	3,220	1,713	1,054	1,561	798	8,346	1,017	636	304	1,957
Trace to 0.10	30	50	827	963	434	2,304	481	267	139	887
0.11 to 0.50	2	20	1,186	181	63	1,452	366	326	52	744
0.51 to 1.00	0	0	13	6	3	22	29	38	4	71
1.01 to 1.50	0	1	4	1	0	6	3	4	0	7
1.51 to 2.00	0	0	8	1	10	3	3	0	0	6
2.01 to 3.00	0	0	2	0	0	2	0	0	0	0
Above 3.00	0	0	4	0	0	4	2	0	0	2
Total	3,252	1,784	3,098	2,713	1,299	12,146	1,901	1,274	499	3,674
Endrin:										
None found	3,248	1,782	3,096	2,692	1,279	12,097	1,886	1,271	481	3,638
Trace to 0.10	2	0	1	17	20	40	8	3	17	28
0.11 to 0.50	2	2	1	4	0	9	6	0	1	7
0.51 to 1.00	0	0	0	0	0	0	1	0	0	1
1.01 to 1.50	0	0	0	0	0	0	0	0	0	0
1.51 to 2.00	0	0	0	0	0	0	0	0	0	0
2.01 to 3.00	0	0	0	0	0	0	0	0	0	0
Above 3.00	0	0	0	0	0	0	0	0	0	0
Total	3,252	1,784	3,098	2,713	1,299	12,146	1,901	1,274	499	3,674
Heptachlor:										
None found	3,241	1,709	3,020	1,970	1,044	10,984	1,896	1,243	494	3,633
Trace to 0.10	11	50	74	628	213	976	5	13	2	20
0.11 to 0.50	0	25	4	109	42	180	0	18	3	21
0.51 to 1.00	0	0	0	5	0	5	0	0	0	0
1.01 to 1.50	0	0	0	1	0	1	0	0	0	0
1.51 to 2.00	0	0	0	0	0	0	0	0	0	0
2.01 to 3.00	0	0	0	0	0	0	0	0	0	0
Above 3.00	0	0	0	0	0	0	0	0	0	0
Total	3,252	1,784	3,098	2,713	1,299	12,146	1,901	1,274	499	3,674

NUMBER OF SAMPLES—Continued

Range PPM	Domestic						Imported			
	1965	1966	1967	1968	1969	Total	1967	1968	1969	Total
Lindane:										
None found.....	3,202	1,680	2,831	2,462	1,171	11,346	1,747	1,091	382	3,220
Trace to 0.10.....	26	56	217	202	106	607	116	144	104	364
0.11 to 0.50.....	15	34	40	43	22	154	29	38	13	80
0.51 to 1.00.....	6	6	5	5	0	22	4	1	0	5
1.01 to 1.50.....	1	3	4	1	0	9	4	0	0	4
1.51 to 2.00.....	0	2	1	0	0	3	1	0	0	1
2.01 to 3.00.....	2	3	0	0	0	5	0	0	0	0
Above 3.00.....	0	0	0	0	0	0	0	0	0	0
Total.....	3,252	1,784	3,098	2,713	1,299	12,146	1,901	1,274	499	3,674
Toxaphene:										
None found.....	3,104	1,773	3,093	2,709	1,298	11,977	1,899	1,274	499	3,672
Trace to 0.10.....	56	3	0	0	1	60	0	0	0	0
0.11 to 0.50.....	45	4	2	0	0	51	0	0	0	0
0.51 to 1.00.....	23	3	1	0	0	27	0	0	0	0
1.01 to 1.50.....	5	0	0	0	0	5	0	0	0	0
1.51 to 2.00.....	12	1	0	0	0	13	0	0	0	0
2.01 to 3.00.....	4	0	2	1	0	7	0	0	0	0
Above 3.00.....	3	0	0	3	0	6	2	0	0	2
Total.....	3,252	1,784	3,098	2,713	1,299	12,146	1,901	1,274	499	3,674
Heptachlor epoxide:										
None found.....			2,429	0	0	2,429	1,714	1,161	426	3,301
Trace to 0.10.....			600	0	0	600	161	94	60	315
0.11 to 0.50.....			60	0	0	60	26	19	13	58
0.51 to 1.00.....			3	0	0	3	0	0	0	0
1.01 to 1.50.....			2	0	0	2	0	0	0	0
1.51 to 2.00.....			0	0	0	0	0	0	0	0
2.01 to 3.00.....			2	0	0	2	0	0	0	0
Above 3.00.....			2	0	0	2	0	0	0	0
Total.....			3,098	0	0	3,098	1,901	1,274	499	3,674
Methoxychlor:										
None found.....	3,157	1,780	3,076	2,658	1,260	11,931	1,888	1,271	492	3,651
Trace to 0.10.....	46	1	8	6	16	77	8	1	3	12
0.11 to 0.50.....	21	1	9	38	23	92	3	0	3	6
0.51 to 1.00.....	19	0	4	10	0	33	1	2	1	4
1.01 to 1.50.....	4	0	0	0	0	4	1	0	0	1
1.51 to 2.00.....	3	2	0	0	0	5	0	0	0	0
2.01 to 3.00.....	2	0	1	0	0	3	0	0	0	0
Above 3.00.....	0	0	0	1	0	1	0	0	0	0
Total.....	3,252	1,784	3,098	2,713	1,299	12,146	1,901	1,274	499	3,674

Source: Food and Drug Administration.

PESTICIDE RESIDUES IN IMPORTED MEATS, CALENDAR YEARS 1967-70 (BEEF, PORK, SWINE, SHEEP)

[Number of samples]

Range (parts per million)	1967	1968	1969	1970
DDT				
Total samples analyzed	1,928	1,414	1,033	995
None found	112	23	18	26
0.01 to 0.10	413	266	299	333
0.11 to 0.50	534	498	438	453
0.51 to 1	196	116	95	85
1.01 to 1.50	86	32	36	14
1.51 to 2	51	20	9	2
2.01 to 2.50	27	9	2	4
2.51 to 3	19	10	5	5
3.01 to 3.50	13	2	3	3
3.51 to 4	5	5	4	1
4.01 to 4.50	6		5	
4.51 to 5	1	2	1	
5.01 to 6	6		3	1
6.01 to 7	3		1	
7.01 to 8		1	2	
8.01 to 10			2	2
10 to 15	2			
15 and over	1		1	
Total positives	363	961	906	903
Violations of total positives	7	1	7	2
Total samples in violation	302	377	107	77
DIELDRIN				
Total samples analyzed	1,928	1,414	1,033	995
None found	112	23	18	26
0.01 to 0.10	467	334	411	592
0.11 to 0.50	370	414	95	42
0.51 to 1	29	39	5	
1.01 to 1.50	2	4		
1.51 to 2	3	2		
2.01 to 2.50				
2.51 to 3				
3.01 to 3.50	1			
3.51 to 4				
4.01 to 4.50	1			
4.51 to 5				
5.01 to 6				
6.01 to 7				
7.01 to 8				
8.01 to 10				
10.0 to 15				
15.0 and over				
Total positives	873	793	511	634
Violations of total positives	174	193	11	21
Total samples in violation	302	377	107	77
BENZENE HEXACHLORIDE				
Total samples analyzed	1,928	1,414	1,033	995
None found	112	23	18	26
0.01 to 0.10	540	508	435	523
0.11 to 0.50	290	423	188	200
0.51 to 1	50	77	15	4
1.01 to 1.50	15	12	4	1
1.51 to 2	6	2	1	
2.01 to 2.50	4	2	1	
2.51 to 3	1	2		
3.01 to 3.50	1	1		
3.51 to 4	1	1		
4.01 to 4.50				
4.51 to 5	1			
5.01 to 6				
6.01 to 7	2			
7.01 to 8				
8.01 to 10		1		
10.0 to 15				
15.0 and over				
Total positives	911	1,029	644	728
Violations of total positives	173	263	64	68
Total samples in violation	302	377	107	77

PESTICIDE RESIDUES IN IMPORTED MEATS, CALENDAR YEARS 1967-70 (BEEF, PORK, SWINE, SHEEP)—Continued
[Number of samples]

Range (parts per million)	1967	1968	1969	1970
HEPTACHLOR EPOXIDE				
Total samples analyzed.....	1, 928	1, 414	1, 033	995
None found.....	112	23	18	26
0.01 to 0.10.....	137	127	121	203
0.11 to 0.50.....	26	29	28	26
0.51 to 1.....			1	
1.01 to 1.50.....				
1.51 to 2.....				
2.01 to 2.50.....				1
2.51 to 3.....				
3.01 to 3.50.....				
3.51 to 4.....				
4.01 to 4.50.....				
4.51 to 5.....				
5.01 to 6.....				
6.01 to 7.....				
7.01 to 8.....				
8.01 to 10.....				
10.0 to 15.....				
15.0 and over.....	1	1		
Total positives.....	164	157	150	230
Violations of total positives.....	5	2	8	2
Total samples in violation.....	302	377	107	77

Source: U.S. Department of Agriculture.